

**COLORADO**  
**JURY INSTRUCTIONS**  

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**CRIMINAL**


**MODEL CRIMINAL JURY INSTRUCTIONS**  
**COMMITTEE**  
**OF THE COLORADO SUPREME COURT**

**2019 Edition**

**Volume 2**



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# COLORADO JURY INSTRUCTIONS

## CRIMINAL 2019 Edition

Model Criminal Jury  
Instructions Committee  
of the Colorado Supreme Court

Volume 2



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# COLORADO JURY INSTRUCTIONS

## CRIMINAL

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By

Supreme Court of Colorado for the  
State of Colorado

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## WHAT'S NEW IN THE 2019 EDITION

### NOTATION OF REVISIONS AND NEW MATERIAL

COLJI-Crim. (2019) contains expanded Comments, revisions based on 2019 legislation, corrections to substantive errors that appeared in COLJI-Crim. (2018), and corrections to non-substantive formatting irregularities.

The Committee has highlighted each substantive revision by means of the “+” symbol (which can be used as a search term by those who wish to survey the 2019 revisions). However, the Committee has not highlighted formatting revisions that are inconsequential. Furthermore, the Committee has removed the “+” symbol that appeared in the prior year’s notations, but it has retained the comment explaining prior changes for clarity. Where the text of a model instruction has been altered, the “+” symbol appears at the point of the revision, and again in the new separate Comment which explains the change. See, e.g., Instruction F:17, Comment 6 (“+ In 2019, the Committee changed the phrase ‘certified police working horse’ to ‘police working horse’ pursuant to a legislative amendment. See Ch. 75, sec. 1, § 18-9-201(2), 2019 Colo. Sess. Laws 276, 276.”).

Where a Comment has been added, corrected, or significantly expanded, the “+” symbol appears at the point of the revision, and again in the new separate Comment which explains the reason for the change. See, e.g., Instruction D:12, Comment 2 (“+ In 2019, the Committee updated the statutory citation in Comment 1 to reflect a legislative amendment. See Ch. 42, sec. 1, § 13-25-129, 2019 Colo. Sess. Laws 144, 145.”).





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**COLORADO SUPREME COURT  
ORDER**

WHEREAS, the Colorado Supreme Court Model Criminal Jury Instructions Committee has formulated instructions concerning criminal cases necessitated by numerous amendments to the statutes of the State of Colorado since the previous edition of these instructions was published; and

WHEREAS, the Chair of the Committee has regularly informed the Court of the Committee's work;

NOW, THEREFORE, IT IS ORDERED that these jury instructions and comments are approved by this Court for use in jury trials in criminal cases in the State of Colorado, subject to the following qualifications:

These instructions are intended as guidelines and should be used in cases in which they are applicable. The Court does not specifically approve any of these instructions not yet tested in an adversary proceeding. They are not intended to be a complete set of instructions for each case and additional or different instructions may be required depending on the issues of fact and law presented at the trial. Until these instructions are tested in adversary proceedings, they are approved in principle.

DONE and signed this 1st day of September, 2014.

**COLORADO SUPREME COURT**  
By Nancy E. Rice, Chief Justice

# **SUPREME COURT OF COLORADO**

## **OFFICE OF THE CHIEF JUSTICE**

### **ORDER**

#### **Concerning the Reauthorization of the Model Criminal Jury Instructions Committee of the Colorado Supreme Court**

I hereby reauthorize the Model Criminal Jury Instructions Committee and charge it with periodically reviewing, correcting, updating, and improving Colorado Jury Instructions—Criminal.

I reappoint Justice Nathan B. Coats as Chair; Judge John Daniel Dailey as Vice-Chair; and Judge Christie B. Bachmeyer, Judge Bradley Allen Burback, Judge Martin F. Egelhoff, Judge David A. Gilbert, Senior Judge Charles R. Greenacre, Judge Gregory M. Lammons, Judge Valerie J. Robison, Judge Karen A. Romeo, Chief Judge Carlos Samour Jr., Senior Judge P. Dinsmore Tuttle, and Judge Mark D. Warner as Members.

This Order shall apply retroactively to October 1, 2015, and shall expire on September 30, 2017.

DONE and signed this 22 day of June, 2016.

COLORADO SUPREME COURT

By

Nancy E. Rice  
Nancy E. Rice, Chief Justice



**SUPREME COURT OF COLORADO  
OFFICE OF THE CHIEF JUSTICE  
ORDER**

**Concerning the Reauthorization of the Model Criminal  
Jury Instructions Committee of the Colorado Supreme  
Court**

I hereby reauthorize the Model Criminal Jury Instructions Committee and charge it with periodically reviewing, correcting, updating, and improving Colorado Jury Instructions—Criminal.

reappoint Justice Carlos Samour, Jr. as Chair; Judge John Daniel Dailey and Judge Rebecca R. Freyre as Vice-Chairs; and Judge Martin F. Egelhoff, Senior Judge Charles R. Greenacre, Judge Mark Randall, Judge Karen A. Romeo, and Senior Judge P. Dinsmore Tuttle as Members.

This Order shall apply retroactively to October 1, 2018, and shall remain in force until otherwise suspended by a superseding order from the Chief Justice.

DONE and signed this 8th day of August, 2019.

**COLORADO SUPREME COURT  
By Nathan B. Coats, Chief Justice**



## PREFACE

In 2011, then-Chief Justice Michael L. Bender established the Colorado Supreme Court's Model Criminal Jury Instructions Committee (the Committee) and charged it with publishing an updated edition of COLJI-Crim. The Committee thanks the former Chief Justice for providing the Committee with the staff and other resources necessary to accomplish this sizeable undertaking. The Committee is equally grateful to former Chief Justice Nancy E. Rice and current Chief Justice Nathan B. Coats, who has continued this support during their respective tenures.

The Committee has endeavored to draft model instructions that accurately state the law in neutral language. However, the precise format and wording for instructions and verdict forms have never been mandated as a matter of positive law in Colorado, and this publication is neither a restatement nor a comprehensive summary of the law.

The comments that follow the instructions include references to relevant legal authorities, cross-references to other instructions, and directions for addressing alternative scenarios. These comments include citations to relevant decisions of the United States Supreme Court and the Colorado Supreme Court that were announced prior to publication of this volume, as well as relevant decisions of the Colorado Court of Appeals that became final prior to publication (i.e., cases for which a mandate issued).

The Committee's drafting protocols are explained in greater detail in Chapter A (General Directions For Use of COLJI-Crim.), which includes a section with several search tips.

The Committee intends to keep these jury instructions current by periodically publishing new editions or supplements. During the periods between these formal publications, the Committee Reporter will post online summaries of developments in the law related to criminal jury instructions based on legislative changes and decisions of the United States Supreme Court, the Colorado Supreme Court, and the Colorado Court of Appeals. This list, which will be captioned as the "Reporter's Online Update," will be available on the Committee's web page.

Although the Committee expects that the Reporter's Online Update will be a valuable research tool, the Committee emphasizes that it will be an informal publication that is not subject to review by the Committee. Thus, users should not assume that the Committee will make modifications based on information that appears in the Reporter's Online Update.

In addition to these interim summaries of developments in the law related to criminal jury instructions, the Reporter's



Online Update will include notations documenting any errors that the Reporter learns of subsequent to publication. Accordingly, the Committee encourages users to alert the Reporter of errors at [mcjic@judicial.state.co.us](mailto:mcjic@judicial.state.co.us) However, here again, users should not assume that the Committee will make modifications based on recommended corrections that may appear in the Reporter's Online Update.

The Committee invites users to submit recommendations for substantive improvements to the Reporter at the above e-mail address. Although such submissions will not be posted online as part of the Reporter's Online Update, the Reporter will present all suggestions to the Committee for consideration.

Finally, the Committee wishes to express its appreciation for the suggestions of the Plain Language Jury Instructions Committee, a subcommittee of the Colorado Supreme Court's Jury System Standing Committee: Judge James B. Breese (Chair), former Chief Justice Michael L. Bender, Justice Brian D. Boatright, Judge Catherine A. Lemon, Judge Tamara S. Russell, Ruth Falkenberg, Jay S. Grant, Esq., Robert S. Grant, Esq., Thomas J. Hammond, Esq., Professor Timothy Hurley, Professor Anthony Lozano, Miles Madorin, Esq., Penny McPherson, Blake Renner, Esq., Marjorie Seawell, and Penny Wagner.

In addition, the Committee thanks: Weld County Court Judge Dana Nichols and Diane Balkin, Esq. (who collaborated to review a preliminary draft of Chapter 9-2 (Cruelty to Animals)); Christopher T. Ryan, Clerk of the Colorado Supreme Court, and staff (who provided the Committee with administrative and logistical support); Daniel Cordova, Supreme Court Law Librarian, and staff (who assisted the Committee with research); Bryan Lopez (who provided the cover photograph); Andrea Cole, Joan Cordutsky, Joseph DeStafney, Kristin Marburg, Melissa McClure, Catherine McDaugale, Sandy Mills, David Steiner, and J.J. Wallace, Associate Staff Attorneys for the Colorado Court of Appeals (who helped proofread the manuscript); Jenny Moore, Rules Research Attorney for the Colorado Supreme Court (who also helped proofread the manuscript); and Christine Kreger, of the Colorado State Library (who provided technical assistance).

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## **CHAPTER 5-1**

# **FORGERY, SIMULATION, IMPERSONATION, AND RELATED OFFENSES**

**5-1:01**

### **Forgery (Governmental Instruments)**

**The elements of the crime of forgery (governmental instruments) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to defraud,**
- 5. falsely made, completed, altered, or uttered a written instrument,**
- 6. which was, or which purported to be, or which was calculated to become or to represent if completed,**
- 7. part of an issue of money, stamps, securities, or other valuable instruments issued by a government or government agency.**
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements be-**



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yond a reasonable doubt, you should find the defendant guilty of forgery (governmental instruments).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of forgery (governmental instruments).

### COMMENT

1. See § 18-5-102(1)(a), C.R.S. 2019.

2. See Instruction F:139 (defining “falsely alter”); Instruction F:141 (defining “falsely complete”); Instruction F:144 (defining “falsely make”); Instruction F:163 (defining “government”); Instruction F:185 (defining “with intent”); Instruction F:385 (defining “utter”); Instruction F:394 (defining “written instrument”).

3. The term “defraud” is not defined by statute.

4. In 2016, the Committee added a cross-reference to Instruction F:185 in Comment 2.

### 5-1:02

#### **Forgery (Instruments Relating to a Corporation or Organization)**

The elements of the crime of forgery (instruments relating to a corporation or organization) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to defraud,
5. falsely made, completed, altered, or uttered a written instrument,
6. which was, or which purported to be, or which

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was calculated to become or to represent if completed,

7. part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporate or other organization or its property.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of forgery (instruments relating to a corporation or organization).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of forgery (instruments relating to a corporation or organization).

**COMMENT**

1. See § 18-5-102(1)(b), C.R.S. 2019.

2. See Instruction F:139 (defining “falsely alter”); Instruction F:141 (defining “falsely complete”); Instruction F:144 (defining “falsely make”); Instruction F:185 (defining “with intent”); Instruction F:385 (defining “utter”); Instruction F:394 (defining “written instrument”).

3. The term “defraud” is not defined by statute.

4. In 2016, the Committee added a cross-reference to Instruction F:185 in Comment 2.

**5-1:03**

**Forgery (Legal Right, Interest, Obligation, or Status)**

The elements of the crime of forgery (legal right, interest, obligation, or status) are:

1. That the defendant,

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- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to defraud,**
- 5. falsely made, completed, altered, or uttered a written instrument,**
- 6. which was, or which purported to be, or which was calculated to become or to represent if completed,**
- 7. a deed, will, codicil, contract, assignment, commercial instrument, promissory note, check, or other instrument which did or might evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.**
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of forgery (legal right, interest, obligation, or status).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of forgery (legal right, interest, obligation, or status).**

**COMMENT**

1. See § 18-5-102(1)(c), C.R.S. 2019.

2. See Instruction F:139 (defining “falsely alter”); Instruction F:141 (defining “falsely complete”); Instruction F:144 (defining “falsely make”); Instruction F:185 (defining “with intent”); Instruction F:385 (defining “utter”); Instruction F:394 (defining “written instrument”).



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3. See *People v. Cunefare*, 102 P.3d 302, 308 (Colo. 2004) (noting that the “general assembly has not defined legal right, interest, obligation, or status under section 18-5-102,” and holding that the section “is not limited to the objectives of property transfer or monetary gain through the use of false instruments,” and thus “applies to any legal right, interest, obligation or status—including a letter forged with the intent to secure dismissal of pending criminal charges”).

4. The term “defraud” is not defined by statute.

5. In 2016, the Committee added a cross-reference to Instruction F:185 in Comment 2.

**5-1:04**

### **Forgery (Public Record or Instrument)**

**The elements of the crime of forgery (public record or instrument) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to defraud,**
- 5. falsely made, completed, altered, or uttered a written instrument,**
- 6. which was, or which purported to be, or which was calculated to become or to represent if completed,**
- 7. a public record or an instrument filed or required by law to be filed or legally fileable in or with a public office or public servant.**
- [8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**

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**the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of forgery (public record or instrument).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of forgery (public record or instrument).**

### COMMENT

1. *See* § 18-5-102(1)(d), C.R.S. 2019.

2. *See* Instruction F:139 (defining “falsely alter”); Instruction F:141 (defining “falsely complete”); Instruction F:144 (defining “falsely make”); Instruction F:185 (defining “with intent”); Instruction F:385 (defining “utter”); Instruction F:394 (defining “written instrument”).

3. The term “defraud” is not defined by statute.

4. + *See* *People v. Carian*, 2017 COA 106, ¶ 26, 414 P.3d 34, 40 (“[U]nder subsection (1)(d), ‘filed or required by law to be filed or legally fileable in or with a public office or public servant’ refers to those instruments actually delivered to a public office or public servant pursuant to a legal mandate, such as documents that have a specific legal requirement of delivery to a public officer or with a public office for a specific purpose, like income taxes or license applications.”).

5. In 2016, the Committee added a cross-reference to Instruction F:185 in Comment 2.

6. + In 2019, the Committee added Comment 4.

### 5-1:05

### **Forgery (Officially Issued or Created)**

**The elements of the crime of forgery (officially issued or created) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**

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**4. to defraud,**

**5. falsely made, completed, altered, or uttered a  
written instrument,**

**6. which was, or which purported to be, or which  
was calculated to become or to represent if com-  
pleted,**

**7. a written instrument officially issued or cre-  
ated by a public office, public servant, or govern-  
ment agency.**

**[8. and that the defendant's conduct was not  
legally authorized by the affirmative defense[s] in  
Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide  
the prosecution has proven each of the elements be-  
yond a reasonable doubt, you should find the defen-  
dant guilty of forgery (officially issued or created).**

**After considering all the evidence, if you decide  
the prosecution has failed to prove any one or more  
of the elements beyond a reasonable doubt, you  
should find the defendant not guilty of forgery (of-  
ficially issued or created).**

**COMMENT**

**1. See § 18-5-102(1)(e), C.R.S. 2019.**

**2. See Instruction F:139 (defining “falsely alter”); Instruction F:141  
(defining “falsely complete”); Instruction F:144 (defining “falsely make”);  
Instruction F:163 (defining “government”); Instruction F:185 (defining  
“with intent”); Instruction F:385 (defining “utter”); Instruction F:394  
(defining “written instrument”).**

**3. The term “defraud” is not defined by statute.**

**4. In 2016, the Committee added a cross-reference to Instruction  
F:185 in Comment 2.**



5-1:06

**Forgery (Public Conveyances or Compensation)**

The elements of the crime of forgery (public conveyances or compensation) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to defraud,
5. falsely made, completed, altered, or uttered a written instrument,
6. which was, or which purported to be, or which was calculated to become or to represent if completed,
7. part of an issue of tokens, transfers, certificates, or other articles manufactured and designed for use in transportation fees upon public conveyances, or as symbols of value usable in place of money for the purchase of property or services available to the public for compensation.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of forgery (public conveyances or compensation).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more

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**of the elements beyond a reasonable doubt, you  
should find the defendant not guilty of forgery (pub-  
lic conveyances or compensation).**

**COMMENT**

1. See § 18-5-102(1)(f), C.R.S. 2019.

2. See Instruction F:139 (defining “falsely alter”); Instruction F:141 (defining “falsely complete”); Instruction F:144 (defining “falsely make”); Instruction F:185 (defining “with intent”); Instruction F:299 (defining “public conveyance”); Instruction F:385 (defining “utter”); Instruction F:394 (defining “written instrument”).

3. The term “defraud” is not defined by statute.

4. In 2016, the Committee added a cross-reference to Instruction F:185 in Comment 2.

**5-1:07**

**Forgery (Lottery)**

**The elements of the crime of forgery (lottery) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date  
and place charged,**
- 3. with intent,**
- 4. to defraud,**
- 5. falsely made, completed, altered, or uttered a  
written instrument,**
- 6. which was, or which purported to be, or which  
was calculated to become or to represent if com-  
pleted,**
- 7. part of an issue of lottery tickets or shares  
designed for use in the state lottery.**
- [8. and that the defendant’s conduct was not**

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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of forgery (lottery).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of forgery (lottery).**

### COMMENT

1. See § 18-5-102(1)(g), C.R.S. 2019.

2. See Instruction F:139 (defining “falsely alter”); Instruction F:141 (defining “falsely complete”); Instruction F:144 (defining “falsely make”); Instruction F:185 (defining “with intent”); Instruction F:385 (defining “utter”); Instruction F:394 (defining “written instrument”).

3. See § 44-40-109, C.R.S. 2019 (defining the Colorado Lottery Commission’s rule-making authority for conducting lotteries).

4. The term “defraud” is not defined by statute.

5. In 2016, the Committee added a cross-reference to Instruction F:185 in Comment 2.

6. In 2018, the Committee updated the statutory citation in Comment 3 to reflect a legislative reorganization. See Ch. 31, secs. 2, 9, §§ 44-40-109, 18-5-102(1)(g), 2018 Colo. Sess. Laws 333, 346, 363.

### 5-1:08

#### **Forgery (Document-Making Implement)**

**The elements of the crime of forgery (document-making implement) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**



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- 3. with intent,**
- 4. to defraud,**
- 5. falsely made, completed, altered, or uttered a written instrument,**
- 6. which was, or which purported to be, or which was calculated to become or to represent if completed,**
- 7. a document-making implement that might be used or was used in the production of a false identification document or in the production of another document-making implement to produce false identification documents.**
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of forgery (document-making implement).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of forgery (document-making implement).**

**COMMENT**

1. *See* § 18-5-102(1)(h), C.R.S. 2019.

2. *See* Instruction F:105 (defining “document-making implement”); Instruction F:139 (defining “falsely alter”); Instruction F:141 (defining “falsely complete”); Instruction F:144 (defining “falsely make”); Instruction F:174 (defining “identification document”); Instruction F:185 (defining “with intent”); Instruction F:286 (defining “produce”); Instruction F:385 (defining “utter”); Instruction F:394 (defining “written instrument”).

3. The term “defraud” is not defined by statute.

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4. In 2016, the Committee added a cross-reference to Instruction F:185 in Comment 2.

### 5-1:09.SP

#### **Forgery—Special Instruction (Peace Officer)**

**Uttering a forged document to a peace officer gives rise to a permissible inference that that the person intended to defraud the peace officer.**

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

#### COMMENT

1. See § 18-5-102(3), C.R.S. 2019.

2. Although the statute speaks in terms of a presumption, the concept should be explained as a permissible inference. See *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

3. Although the term “forged document” is not defined by statute, section 18-5-101(5), C.R.S. 2019, defines a “forged instrument” as “a written instrument which has been falsely made, completed, or altered.” Accordingly, it appears reasonable to infer that a document which has been “falsely made, completed, or altered,” would, similarly, constitute a “forged document.”

4. The term “defraud” is not defined by statute.

### 5-1:10

#### **Second Degree Forgery**

**The elements of the crime of second degree forgery are:**

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- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to defraud,**
- 5. falsely made, completed, altered, or uttered a written instrument,**
- 6. that was not a [list those items enumerated in sections 18-5-102 and 18-5-104.5 that bear a resemblance to the written instrument forming the basis for the charge].**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of second degree forgery.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of second degree forgery.**

**COMMENT**

**1. See § 18-5-104(1), C.R.S. 2019.**

**2. See Instruction F:139 (defining “falsely alter”); Instruction F:141 (defining “falsely complete”); Instruction F:144 (defining “falsely make”); Instruction F:185 (defining “with intent”); Instruction F:385 (defining “utter”); Instruction F:394 (defining “written instrument”).**

**3. The term “defraud” is not defined by statute.**

**4. In 2016, the Committee added a cross-reference to Instruction F:185 in Comment 2.**



5-1:11

**Use of a Forged Academic Record**

The elements of the crime of use of a forged academic record are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to seek employment, or to seek admission to a public or private institution of higher education in this state, or to secure a scholarship or other form of financial assistance from the institution itself or from other public or private sources of financial assistance,
5. falsely made, completed, altered, or uttered a written instrument which was or purported to be, or was calculated to become or to represent if completed, a bona fide academic record of an institution of secondary or higher education.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of use of a forged academic record.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of use of a forged academic record.

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COMMENT**

1. See § 18-5-104.5(1), C.R.S. 2019.

2. See Instruction F:04 (defining “academic record”); Instruction F:139 (defining “falsely alter”); Instruction F:141 (defining “falsely complete”); Instruction F:144 (defining “falsely make”); Instruction F:149 (defining “financial assistance”); Instruction F:185 (defining “with intent”); Instruction F:385 (defining “utter”); Instruction F:394 (defining “written instrument”).

3. In 2016, the Committee added a cross-reference to Instruction F:185 in Comment 2.

**5-1:12**

**Criminal Possession of a Forged Instrument**

**The elements of criminal possession of a forged instrument are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. possessed any forged written instrument,**
- 4. with knowledge that it was forged, and**
- 5. with intent to use it to defraud, and**

**[6. the written instrument was part of an issue of money, stamps, securities, or other valuable instruments issued by a government or government agency.]**

**[6. the written instrument was part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporate or other organization or its property.]**

**[6. the written instrument was a deed, will, codicil, contract, assignment, commercial instrument, promissory note, check, or other instru-**

ment which did or might evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.]

[6. the written instrument was a public record or an instrument filed or required by law to be filed or legally fileable in or with a public office or public servant.]

[6. the written instrument was a written instrument officially issued or created by a public office, public servant, or government agency.]

[6. the written instrument was part of an issue of tokens, transfers, certificates, or other articles manufactured and designed for use in transportation fees upon public conveyances, or as symbols of value usable in place of money for the purchase of property or services available to the public for compensation.]

[6. the written instrument was part of an issue of lottery tickets or shares designed for use in the state lottery.]

[6. the written instrument was a document-making implement that might be used or was used in the production of a false identification document or in the production of another document-making implement to produce false identification documents.]

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a forged instrument.



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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a forged instrument.**

### **COMMENT**

1. See § 18-5-105, C.R.S. 2019.

2. See Instruction F:105 (defining “document-making implement”); Instruction F:139 (defining “falsely alter”); Instruction F:141 (defining “falsely complete”); Instruction F:144 (defining “falsely make”); Instruction F:158 (defining “forged instrument”); Instruction F:163 (defining “government”); Instruction F:174 (defining “identification document”); Instruction F:185 (defining “with intent”); Instruction F:281 (defining “possession”); Instruction F:286 (defining “produce”); Instruction F:299 (defining “public conveyance”); Instruction F:385 (defining “utter”); Instruction F:394 (defining “written instrument”).

3. See *People v. Miralda*, 981 P.2d 676, 679 (Colo. App. 1999) (mere possession is insufficient to sustain a conviction for criminal possession of a forged instrument; a defendant’s intent to defraud must be proven through evidence of his or her status (e.g., as a fugitive, in possession of a false identification document), other circumstances surrounding the possession, or the manner in which the defendant actually used the document).

4. The term “defraud” is not defined by statute.

### **5-1:13**

#### **Criminal Possession of a Second Degree Forged Instrument**

**The elements of criminal possession of a second degree forged instrument are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. possessed any forged written instrument,**
- 4. with knowledge that it was forged, and**
- 5. with intent to use it to defraud, and**

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**6. the written instrument was not a [list those items enumerated in sections 18-5-102 and 18-5-104.5 that bear a resemblance to the written instrument forming the basis for the charge].**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a second degree forged instrument.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a second degree forged instrument.**

**COMMENT**

1. See § 18-5-107, C.R.S. 2019.

2. See Instruction F:158 (defining “forged instrument”); Instruction F:185 (defining “with intent”); Instruction F:281 (defining “possession”); Instruction F:394 (defining “written instrument”).

3. The term “defraud” is not defined by statute.

**5-1:14**

**Criminal Possession of a Forgery Device (Knowledge)**

**The elements of criminal possession of a forgery device (knowledge) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. made or possessed,**

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**4. with knowledge of its character,**

**5. any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments or counterfeit marks.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a forgery device (knowledge).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a forgery device (knowledge).**

**COMMENT**

**1. See § 18-5-109(1)(a), C.R.S. 2019.**

**2. See Instruction F:76 (defining “counterfeit mark”); Instruction F:281 (defining “possession”); Instruction F:394 (defining “written instrument”).**

**5-1:15**

**Criminal Possession of a Forgery Device (Intent)**

**The elements of criminal possession of a forgery device (intent) are:**

**1. That the defendant,**

**2. in the State of Colorado, at or about the date and place charged,**

**3. made or possessed any device, apparatus,**



equipment, or article capable of or adaptable for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments or counterfeit marks,

4. with intent to use it, or to aid or permit another to use it, for purposes of forgery or the production of counterfeit marks.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a forgery device (intent).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a forgery device (intent).

#### COMMENT

1. See § 18-5-109(1)(b), C.R.S. 2019.

2. See Instruction F:76 (defining “counterfeit mark”); Instruction F:185 (defining “with intent”); Instruction F:281 (defining “possession”); Instruction F:394 (defining “written instrument”).

#### 5-1:16

### **Criminal Possession of a Forgery Device (Genuine Device)**

The elements of criminal possession of a forgery device (genuine device) are:

1. That the defendant,

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**2. in the State of Colorado, at or about the date and place charged,**

**3. illegally possessed a genuine plate, die, or other device used in the production of written instruments or counterfeit marks,**

**4. with intent to fraudulently use it.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a forgery device (genuine device).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a forgery device (genuine device).

**COMMENT**

1. See § 18-5-109(1)(c), C.R.S. 2019.

2. See Instruction F:76 (defining “counterfeit mark”); Instruction F:185 (defining “with intent”); Instruction F:281 (defining “possession”); Instruction F:394 (defining “written instrument”).

3. The third element of the instruction includes the word “illegally” because it appears in the statute. However, it is unclear whether the illegality is: (1) possessing a device without proper legal authority; or (2) obtaining a device by commission of a separate criminal act (e.g., theft).

**5-1:17**

**Criminal Possession of a Forgery Device (Document-Making Implement)**

The elements of criminal possession of a forgery device (document-making implement) are:

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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. unlawfully made, produced, possessed, or uttered a document-making implement,
  4. knowing that such document-making implement might be used, or was used, in the production of a false identification document or counterfeit mark or another implement for the production of false identification documents or counterfeit marks.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a forgery device (document-making implement).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a forgery device (document-making implement).

### COMMENT

1. See § 18-5-109(1)(d), C.R.S.

2. See Instruction F:76 (defining “counterfeit mark”); Instruction F:105 (defining “document-making implement”); Instruction F:174 (defining “identification document”); Instruction F:281 (defining “possession”); Instruction F:385 (defining “utter”).

3. The third element of the instruction includes the word “unlawfully” because it appears in the statute. However, it is unclear whether this unlawfulness requires that the manufacturing, producing, possess-



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ing, or uttering of a document-making implement also constitute a separate criminal act (e.g., theft).

### **5-1:18**

#### **Criminal Simulation (Intent to Defraud)**

The elements of criminal simulation (intent to defraud) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to defraud,
5. made, altered, or represented any object in such fashion that it appeared to have an antiquity, rarity, source or authorship, ingredient, or composition which it did not in fact have.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal simulation (intent to defraud).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal simulation (intent to defraud).

#### **COMMENT**

1. See § 18-5-110(1)(a), C.R.S. 2019.

2. See Instruction F:185 (defining "with intent"); Instruction F:195 (defining "knowingly"); Instruction F:385 (defining "utter").

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3. The term “defraud” is not defined by statute.

**5-1:19**

### **Criminal Simulation (Knowledge of True Character)**

**The elements of criminal simulation (knowledge of true character) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with knowledge of an object’s true character, and**
- 4. with intent,**
- 5. to use to defraud,**
- 6. uttered, misrepresented, or possessed any object that was made or altered in such fashion that it appeared to have an antiquity, rarity, source or authorship, ingredient, or composition which it did not in fact have.**

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal simulation (knowledge of true character).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal simulation (knowledge of true character).**

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COMMENT**

1. See § 18-5-110(1)(b), C.R.S. 2019.
2. See Instruction F:185 (defining “with intent”); Instruction F:281 (defining “possession”); Instruction F:385 (defining “utter”).
3. The term “defraud” is not defined by statute.

**5-1:20**

**Trademark Counterfeiting**

**The elements of the crime of trademark counterfeiting are:**

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. intentionally,
  4. manufactured, displayed, advertised, distributed, offered for sale, sold, or possessed with intent to sell or distribute,
  5. marks, goods, or services,
  6. that the defendant knew were, bore, or were identified by one or more counterfeit marks, and
  7. had possession, custody, or control of more than twenty-five items bearing a counterfeit mark.
- [8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of trademark counterfeiting.



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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of trademark counterfeiting.

### COMMENT

1. See § 18-5-110.5(1), C.R.S. 2019.

2. See Instruction F:76 (defining “counterfeit mark”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”); Instruction F:394 (defining “written instrument”).

### 5-1:21.INT

#### Trademark Counterfeiting—Interrogatory (Large Number of Items)

If you find the defendant not guilty of trademark counterfeiting, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of trademark counterfeiting, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the offense involve a large number of items?  
(Answer “Yes” or “No”)

The offense involved a large number of items only if:

1. the aggregate quantity of items that were, bore, or were identified by a counterfeit mark was one hundred or more.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide

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**the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

1. *See* § 18-5-110.5(2)(a)(II)(B), (3)(b)(III), C.R.S. 2019.

2. *See* Instruction F:322 (defining “retail value”); *see, e.g.*, Instruction E:28 (special verdict form).

**5-1:22.INT**

**Trademark Counterfeiting—Interrogatory (Highly Valuable  
Items)**

**If you find the defendant not guilty of trademark counterfeiting, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of trademark counterfeiting, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the offense involve highly valuable items?  
(Answer “Yes” or “No”)**

**The offense involved highly valuable items only  
if:**

**1. the total retail value of all goods or services that were, bore, or were identified by a counterfeit mark was one thousand dollars or more.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

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After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-5-110.5(2)(a)(II)(B), C.R.S. 2019.
2. See Instruction F:322 (defining “retail value”); see, e.g., Instruction E:28 (special verdict form).
3. In 2016, the Committee corrected the statutory citation in Comment 1.

### 5-1:23

#### Unlawfully Using Slugs (Intent to Defraud)

The elements of the crime of unlawfully using slugs (intent to defraud) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to defraud the vendor of property or a service sold by means of a coin machine,
5. knowingly,
6. inserted, deposited, or used a slug in such a machine, or caused such a machine to be operated by any unauthorized means.
- [7. and that the defendant’s conduct was not



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**legally authorized by the affirmative defense[s] in  
Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide  
the prosecution has proven each of the elements be-  
yond a reasonable doubt, you should find the defen-  
dant guilty of unlawfully using slugs (intent to  
defraud).**

**After considering all the evidence, if you decide  
the prosecution has failed to prove any one or more  
of the elements beyond a reasonable doubt, you  
should find the defendant not guilty of unlawfully us-  
ing slugs (intent to defraud).**

**COMMENT**

1. See § 18-5-111(1)(a), C.R.S. 2019.
2. See Instruction F:57 (defining “coin machine”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:346 (defining “slug”).
3. The term “defraud” is not defined by statute.

**5-1:24**

**Unlawfully Using Slugs (Intent to Enable)**

**The elements of the crime of unlawfully using  
slugs (intent to enable) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date  
and place charged,
3. with intent,
4. to enable a person to use [a] slug[s] fraudu-  
lently in a coin machine,
5. made, possessed, or disposed of [a] slug[s].

**[6. and that the defendant’s conduct was not**

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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully using slugs (intent to enable).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully using slugs (intent to enable).**

**COMMENT**

1. See § 18-5-111(1)(b), C.R.S. 2019.

2. See Instruction F:57 (defining “coin machine”); Instruction F:185 (defining “with intent”); Instruction F:346 (defining “slug”).

**5-1:25**

**Obtaining a Signature by Deception**

**The elements of the crime of obtaining a signature by deception are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to defraud or to acquire a benefit for himself [herself] or another,**
- 5. caused another to sign or execute a written instrument by,**
- 6. knowingly,**
- 7. creating or confirming another’s impression**

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which was false, and which the defendant did not believe to be true; or failing to correct a false impression held by another which the defendant previously had created or confirmed; or preventing another from acquiring information pertinent to any matter material to a proper understanding of any transaction in which the signature of such person was procured.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of obtaining a signature by deception.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of obtaining a signature by deception.

**COMMENT**

1. See § 18-5-112(1), C.R.S. 2019.

2. See Instruction F:30 (defining “benefit”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:394 (defining “written instrument”).

3. Section 18-5-112(2) states that a person acts “by deception” if he or she acts “knowingly” in one of three ways enumerated in section 18-5-112(2)(a)–(c). Accordingly, this definition is reflected in the sixth and seventh elements of the model instruction.

4. The term “defraud” is not defined by statute.

5. In 2015, the Committee added a cross-reference to Instruction F:185 in Comment 2.



5-1:26

**Criminal Impersonation (Marriage)**

The elements of criminal impersonation (marriage) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. assumed a false or fictitious identity or legal capacity,
5. and in such identity or capacity,
6. married, pretended to marry, or sustained the marriage relation toward another without the connivance of the latter.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal impersonation (marriage).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal impersonation (marriage).

**COMMENT**

1. See § 18-5-113(1)(a)(I), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); see also Webster’s

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*Third New International Dictionary* 481 (2002) (defining “connivance” as “the act of conniving: intentional failure to notice or discover a wrongdoing: passive consent or cooperation”).

**5-1:27**

### **Criminal Impersonation (Bail or Surety)**

**The elements of criminal impersonation (bail or surety) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. assumed a false or fictitious identity or legal capacity,**
- 5. and in such identity or capacity,**
- 6. became bail or surety for a party in an action or proceeding, civil or criminal, before a court or officer authorized to take the bail or surety.**
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal impersonation (bail or surety).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal impersonation (bail or surety).**

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### **COMMENT**

1. See § 18-5-113(1)(a)(II), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).

### **5-1:28**

#### **Criminal Impersonation (Judgment or Instrument)**

**The elements of criminal impersonation (judgment or instrument) are:**

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. assumed a false or fictitious identity or legal capacity,
  5. and in such identity or capacity,
  6. confessed a judgment, or subscribed, verified, published, acknowledged, or proved a written instrument which by law may be recorded, with the intent that the same might be delivered as true.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal impersonation (judgment or instrument).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more



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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal impersonation (judgment or instrument).**

**COMMENT**

1. See § 18-5-113(1)(a)(III), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”).

**5-1:29**

**Criminal Impersonation (Imperiling an Impersonated Person)**

**The elements of criminal impersonation (imperiling an impersonated person) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. assumed a false or fictitious identity or capacity, legal or other,**
- 5. and in such identity or capacity,**
- 6. performed an act that, if done by the person falsely impersonated, might subject that person to an action or special proceeding, civil or criminal, or to liability, charge, forfeiture, or penalty.**

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-**

**dant guilty of criminal impersonation (imperiling an impersonated person).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal impersonation (imperiling an impersonated person).**

**COMMENT**

1. See § 18-5-113(1)(b)(I), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).

**5-1:30**

**Criminal Impersonation (Performing an Act With Intent)**

**The elements of criminal impersonation (performing an act with intent) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. assumed a false or fictitious identity or capacity, legal or other,
5. and in such identity or capacity,
6. performed any other act with intent to unlawfully gain a benefit for himself [herself] or another, or to injure or defraud another.

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements be-**

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**yond a reasonable doubt, you should find the defendant guilty of criminal impersonation (performing an act with intent).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal impersonation (performing an act with intent).**

### **COMMENT**

1. See § 18-5-113(1)(b)(II), C.R.S. 2019.

2. See Instruction F:30 (defining “benefit”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”).

3. Although a 2011 amendment changed the format of section 18-5-113 and added language in 18-5-113(1)(b) distinguishing a “legal” capacity from “other” types of capacities, it does not appear that this amendment disturbed the core of the supreme court’s holding in *Alvarado v. People*, 132 P.3d 1205, 1208 (Colo. 2006) (interpreting the statute as proscribing a single act of criminal impersonation that involves a requirement for the prosecution to prove two culpable mental states, but rejecting the argument that the statute requires proof of an act of impersonation and a separate act from which the defendant intended to receive a benefit).

4. The term “defraud” is not defined by statute.

### **5-1:31.SP**

#### **Criminal Impersonation—Special Instruction (False or Fictitious Personal Identifying Information)**

**For purposes of the crime of criminal impersonation, using false or fictitious personal identifying information constitutes the assumption of a false or fictitious identity or capacity.**

**“Personal identifying information” means information that may be used, alone or in conjunction with any other information, to identify a specific individual, including but not limited to a name; a date of birth; a social security number; a password; a pass**



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**code; an official, government-issued driver's license or identification card number; a government passport number; biometric data; or an employer, student, or military identification number.**

### COMMENT

1. See § 18-5-113(3), C.R.S. 2019.

2. The enactment of section 18-5-113(3), in 2011, effectively overruled the supreme court's decision in *Montes-Rodriguez v. People*, 241 P.3d 924, 927 (Colo. 2010) (providing a false social security number on an application for car loan did not constitute the assumption of a false or fictitious identity or capacity).

3. See Instruction F:272 (defining "personal identifying information").

### 5-1:32

#### **Offering a False Instrument for Recording in the First Degree**

**The elements of the crime of offering a false instrument for recording in the first degree are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing that a written instrument relating to or affecting real or personal property or directly affecting contractual relationships contained a material false statement or material false information, and
4. with intent,
5. to defraud,
6. presented or offered it to a public office or a public employee,
7. with the knowledge or belief that it would be

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registered, filed, or recorded, or become a part of the records of that public office or public employee.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of offering a false instrument for recording in the first degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inducing consumption of offering a false instrument for recording in the first degree.

**COMMENT**

1. See § 18-5-114(1), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); see also Instruction F:141 (defining “materially false statement” as part of the definition of “falsely complete” (forgery and impersonation offenses)).

3. See *People v. Cohn*, 160 P.3d 336 (Colo. App. 2007) (because “the crime of offering a false instrument for recording is completed when the document containing the materially false statement is presented to the public office with intent to defraud and with knowledge or belief it will be recorded,” it is immaterial whether the victim was actually defrauded).

4. The term “defraud” is not defined by statute.

**5-1:33**

**Offering a False Instrument for Recording in the Second  
Degree**

The elements of the crime of offering a false instrument for recording in the second degree are:

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- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowing that a written instrument relating to or affecting real or personal property or directly affecting contractual relationships contained a material false statement or material false information,**
- 4. presented or offered it to a public office or public employee,**
- 5. with the knowledge or belief that it would be registered, filed, or recorded or become a part of the records of the public office or public employee.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of offering a false instrument for recording in the second degree.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of offering a false instrument for recording in the second degree.**

**COMMENT**

**1. See § 18-5-114(3), C.R.S. 2019.**

**2. See also Instruction F:141 (defining “materially false statement” as part of the definition of “falsely complete” (forgery and impersonation offenses)).**



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**5-1:34**

**Inducing Consumption of Controlled Substances by  
Fraudulent Means**

**The elements of the crime of inducing consumption of controlled substances by fraudulent means are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. surreptitiously or by means of fraud, misrepresentation, suppression of truth, deception, or subterfuge,**
- 4. caused another person to unknowingly consume or receive the direct administration of any controlled substance.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of inducing consumption of controlled substances by fraudulent means.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inducing consumption of controlled substances by fraudulent means.**

**COMMENT**

**1. See § 18-5-116(1), C.R.S. 2019.**

**2. See Instruction F:73 (defining "controlled substance" by referring**

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users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019).

3. The statute includes an exemption from criminal liability. *See* § 18-5-116(1), C.R.S. 2019 (“nothing in this section shall diminish the scope of health care authorized by law”). However, the Committee has not drafted a model affirmative defense instruction.

### **CHAPTER 5-2**

## **FRAUD IN OBTAINING PROPERTY OR SERVICES**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2015.

#### **5-2:01**

### **Fraud by Check (Insufficient Funds)**

**The elements of the crime of fraud by check (insufficient funds) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing he [she] had insufficient funds with the drawee,
4. with intent,
5. to defraud,
6. issued one or more checks for the payment of services, wages, salary, commissions, labor, rent, money, property, or other thing of value.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**

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**the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraud by check (insufficient funds).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraud by check (insufficient funds).**

### COMMENT

1. *See* § 18-5-205(2), C.R.S. 2019.

2. *See* Instruction F:48.5 (defining “check”); Instruction F:107.5 (defining “drawee”); Instruction F:183.5 (defining “insufficient funds”); Instruction F:185 (defining “with intent”); Instruction F:371 (defining “thing of value”).

3. *See* *People v. Gutierrez*, 1 P.3d 241, 242 (Colo. App. 1999) (holding that the issuance of an insufficient funds check in payment, or partial payment, of a pre-existing debt can constitute fraud by check pursuant to section 18-5-205(2)); *People v. Kunzelman*, 649 P.2d 340 (Colo. App. 1982) (issuance of a check with insufficient funds for the purpose of retaining possession of personal property obtained on credit can form the predicate for a conviction under the statute).

### 5-2:02.INT

#### **Fraud by Check (Insufficient Funds)—Interrogatory (Value)**

**If you find the defendant not guilty of fraud by check (insufficient funds), you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of fraud by check (insufficient funds), you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question[s] on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]**



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**1. Did you find the defendant guilty of fraud by check (insufficient funds) for issuing either one fraudulent check, or two or more fraudulent checks within a sixty-day period, for a total sum of two thousand dollars or more? (Answer “Yes” or “No”)**

**[2. Did you find the defendant guilty of fraud by check (insufficient funds) for issuing either one fraudulent check, or two or more fraudulent checks within a sixty-day period, for a total sum of seven hundred fifty dollars or more but less than two thousand dollars? (Answer “Yes” or “No”)]**

**[3. Did you find the defendant guilty of fraud by check (insufficient funds) for issuing either one fraudulent check, or two or more fraudulent checks within a sixty-day period, for a total sum of three hundred dollars or more but less than seven hundred fifty dollars? (Answer “Yes” or “No”)]**

**[4. Did you find the defendant guilty of fraud by check (insufficient funds) for issuing either one fraudulent check, or two or more fraudulent checks within a sixty-day period, for a total sum of fifty dollars or more but less than three hundred dollars? (Answer “Yes” or “No”)]**

**The prosecution has the burden to prove beyond a reasonable doubt the total sum of the fraudulent check, or checks issued within a sixty-day period. Your calculation of the total sum of the fraudulent check or checks may include only the monetary amount of checks as to which you unanimously agree the prosecution has proved beyond a reasonable doubt both the defendant’s guilt and issuance within sixty days of each other.**

**After considering all the evidence, if you decide**

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the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place[(s)], and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-5-205(3)(a.7) to (d), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

### 5-2:03.INT

#### **Fraud by Check (Insufficient Funds)—Interrogatory (Nonexistent or Closed Account)**

If you find the defendant not guilty of fraud by check (insufficient funds), you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of fraud by check (insufficient funds), you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:

**Did the defendant use a nonexistent or closed account? (Answer “Yes” or “No”)**

**The defendant used a nonexistent or closed account only if:**

1. the fraudulent check was drawn on an account which did not exist or which had been closed for a period of thirty days or more prior to the issuance of the check[s].

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.



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After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-5-205(3)(e), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

### 5-2:04.SP

#### Fraud by Check (Insufficient Funds)—Special Instruction (Knowledge)

Except in the case of a postdated check or order, the following evidence gives rise to a permissible inference that the issuer had knowledge of his [her] insufficient funds:

He [she] had no account upon which the check or order was drawn with the bank or other drawee at the time he [she] issued the check or order; or he [she] had insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentation within thirty days after issue.

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permis-



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**sible inference does not shift that burden to the defendant.**

### COMMENT

1. *See* § 18-5-205(8), C.R.S. 2019.

2. Although the statute speaks in terms of a presumption, the concept should be explained as a permissible inference. *See* *People v. Felgar*, 58 P.3d 1122, 1125 (Colo. App. 2002) (construing section 18-5-205(8) as creating a permissible inference, and holding that the trial court committed reversible error by instructing the jury, in the language of the statute, that if certain circumstances existed it could presume that the defendant had knowledge of insufficient funds in his account); *see generally* *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

### 5-2:05

#### Fraud by Check (Opening an Account)

**The elements of the crime of fraud by check (opening an account) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. opened a checking account, negotiable order of withdrawal account, or share draft account,
4. using false identification or an assumed name,
5. for the purpose of issuing fraudulent checks.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraud by check (opening an account).**

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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraud by check (opening an account).

### COMMENT

1. See § 18-5-205(5), C.R.S. 2019.

2. See Instruction F:48.5 (defining “check”); Instruction F:241.7 (defining “negotiable order of withdrawal account” and “share draft account”).

### 5-2:06

#### Defrauding a Secured Creditor

The elements of the crime of defrauding a secured creditor are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to defraud a creditor,
5. by defeating, impairing, or rendering worthless or unenforceable any security interest,
6. sold, assigned, transferred, conveyed, pledged, encumbered, concealed, destroyed, or disposed of any collateral subject to a security interest.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of defrauding a secured creditor.

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of defrauding a secured creditor.**

### COMMENT

1. See § 18-5-206(1), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); see also *Black’s Law Dictionary*, 318 (10th ed. 2014) (defining “collateral” as “Property that is pledged as security against a debt; the property subject to a security interest or agricultural lien.”); § 4-9-102(12), C.R.S. 2019 (defining “collateral,” for purposes of the Uniform Commercial Code, as meaning “the property subject to a security interest or agricultural lien,” including “[p]roceeds to which a security interest attaches,” “[a]ccounts, chattel paper, payment intangibles, and promissory notes that have been sold,” and “[g]oods that are the subject of a consignment.”).

3. The term “security interest” is not defined in section 18-5-206. In *People v. Armijo*, 589 P.2d 935, 938 (Colo. 1979), the supreme court analyzed the meaning of the term, for purposes of section 18-5-206, by referring to the definition in the Uniform Commercial Code. See § 4-1-201(35), C.R.S. 2019 (“‘Security interest’ means an interest in personal property or fixtures that secures payment or performance of an obligation.”).

### 5-2:07.INT

#### **Defrauding a Secured Creditor—Interrogatory (Value of Collateral)**

**If you find the defendant not guilty of defrauding a secured creditor, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of defrauding a secured creditor, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question[s] on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]:**



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1. Was the value of the collateral [insert a description of the amount(s) from section 18-5-206(1)(c)–(j)]? (Answer “Yes” or No”)

[2. Was the value of the collateral [insert a description of the amount(s) from section 18-5-206(1)(c)–(j)]? (Answer “Yes” or No”)]

[3. Was the value of the collateral [insert a description of the amount(s) from section 18-5-206(1)(c)–(j)]? (Answer “Yes” or No”)]

The prosecution has the burden to prove the value of the collateral beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-5-206(1)(c) to (j), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

### 5-2:08

#### Defrauding a Debtor

The elements of the crime of defrauding a debtor are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

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3. was a creditor, and
4. with intent,
5. to defraud a debtor,
6. sold, assigned, transferred, conveyed, pledged, bought, or encumbered a promissory note or contract signed by the debtor.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of defrauding a debtor.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of defrauding a debtor.

### COMMENT

1. See § 18-5-206(2), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”).

3. The terms “promissory note” and “contract” are not defined in section 18-5-206. Although the terms are defined elsewhere, it is unclear whether those definitions should be utilized here. See, e.g., § 4-1-201(11), C.R.S. 2019 (“‘Contract’ means the total legal obligation that results from the parties’ agreement as determined by this title as supplemented by any other applicable laws.”); § 4-9-102(65), C.R.S. 2019 (“‘Promissory note’ means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.”); § 7-106-202, C.R.S. 2019 (“For the purposes of this subsection (5), [having to do with issuance of shares in a corporation, the term] ‘promissory note’ means a negotiable instrument on which there is an obligation to pay independent of collateral and does not include a nonrecourse note.”); see also § 18-5-501, C.R.S. 2019 (“The definitions set forth in the “Uniform Commercial Code”, title 4, C.R.S., shall apply to sections 18-5-502 to 18-5-511.”).

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4. In 2016, the Committee corrected the statutory citation to “promissory note.”

### **5-2:09.INT**

#### **Defrauding a Debtor—Interrogatory (Amount Owing On Note or Contract)**

If you find the defendant not guilty of defrauding a debtor, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of defrauding a debtor, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question[s] on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]:

1. Was the amount owing on the note or contract [insert a description of the amount(s) from section 18-5-206(2)(c)–(j)]? (Answer “Yes” or No”)

[2. Was the amount owing on the note or contract [insert a description of the amount(s) from section 18-5-206(2)(c)–(j)]? (Answer “Yes” or No”)]

[3. Was the amount owing on the note or contract [insert a description of the amount(s) from section 18-5-206(2)(c)–(j)]? (Answer “Yes” or No”)]

The prosecution has the burden to prove the amount owing on the note or contract beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.



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After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-5-206(2)(c) to (j), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

### 5-2:10

#### Purchase On Credit to Defraud

The elements of the crime of purchase on credit to defraud are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to defraud the seller or vendor,
5. purchased any personal property on credit and, thereafter, before paying for it,
6. sold, hypothecated, pledged, or disposed of it,
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of purchase on credit to defraud.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more

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elements beyond a reasonable doubt, you should find the defendant not guilty of purchase on credit to defraud.

### COMMENT

1. See § 18-5-207, C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”).

3. The word “hypothecate” is not defined by statute. See, e.g., *Black’s Law Dictionary* 811 (10th ed. 2014) (defining “hypothecate” as meaning: “To pledge (property) as security or collateral for a debt, without delivery of title or possession.”).

### 5-2:11

#### Dual Contracts to Induce Loan

The elements of the crime of dual contracts to induce loan are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. made, issued, delivered, or received dual contracts,
5. for the purchase or sale of real property.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of dual contracts to induce loan.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more

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**elements beyond a reasonable doubt, you should find the defendant not guilty of dual contracts to induce loan.**

### **COMMENT**

1. *See* § 18-5-208, C.R.S. 2019.

2. *See* Instruction F:113.5 (defining “dual contracts”); Instruction F:195 (defining “knowingly”).

### **5-2:12**

#### **Issuing a False Financial Statement (Making or Uttering)**

**The elements of the crime of issuing a false financial statement (making or uttering) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to defraud,**
- 5. knowingly,**
- 6. made or uttered a written instrument which purported to describe the financial condition or ability to pay of himself [herself] or another person, and**
- 7. which was false in some material respect and reasonably relied upon.**
- [8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-**



**dant guilty of issuing a false financial statement (making or uttering).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of issuing a false financial statement (making or uttering).**

**COMMENT**

1. See § 18-5-209(1)(a), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); see also Instruction F:394 (defining “written instrument” for forgery and other offenses in Article 5, Part 1); Instruction F:385 (defining “utter” for purposes of forgery and other offenses in Article 5, Part 1).

**5-2:13**

**Issuing a False Financial Statement (Representing in Writing)**

**The elements of the crime of issuing a false financial statement (representing in writing) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to defraud,**
- 5. represented in writing that a written instrument purporting to describe another person’s financial condition or ability to pay as of a prior date was accurate with respect to that person’s current financial condition or ability to pay,**
- 6. knowing the instrument was materially false in that respect and reasonably relied upon.**

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[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of issuing a false financial statement (representing in writing).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of issuing a false financial statement (representing in writing).

### COMMENT

1. See § 18-5-209(1)(b), C.R.S. 2019.

2. See Instruction F:185 (defining "with intent"); Instruction F:195 (defining "knowingly"); see also Instruction F:394 (defining "written instrument" for forgery and other offenses in Article 5, Part 1).

### 5-2:14

#### Issuing a False Financial Statement (Obtaining a Financial Transaction Device)

The elements of the crime of issuing a false financial statement (obtaining a financial transaction device) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to defraud,
5. upon filing one or more applications for a financial transaction device with an issuer,

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**[6. knowingly made or caused to be made a false statement or report, which was false in some material respect and reasonably relied upon, relative to his [her] name, occupation, financial condition, assets, or liabilities]**

**[6. willfully and substantially overvalued any assets or willfully omitted or substantially undervalued any indebtedness for the purpose of influencing the issuer to issue a financial transaction device], and**

**7. used one or more financial transaction devices issued in reliance upon such application(s) to obtain property or services or money.**

**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of issuing a false financial statement (obtaining a financial transaction device).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of issuing a false financial statement (obtaining a financial transaction device).**

**COMMENT**

1. *See* § 18-5-209(3), (4), C.R.S. 2019.

2. *See* Instruction F:153 (defining “financial transaction device”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly” or “willfully”).

3. This model instruction reflects the Committee's view that section 18-5-209(3) does not fully define an offense without inclusion of the additional element (of usage to obtain property or services or money) that appears in section 18-5-209(4). Significantly, section 18-5-209(3) does



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not contain a penalty provision, and it does not state that a violation constitutes a “felony,” “misdemeanor,” or “petty offense.” Therefore, none of the sentencing provisions for unclassified offenses can be utilized to ascertain the applicable punishment. *See* § 18-1.3-403, C.R.S. 2019 (“In all cases where an offense is denominated by statute as being a felony and no penalty is fixed in the statute therefor, the punishment shall be imprisonment for not more than five years in a correctional facility . . . or a fine of not more than fifteen thousand dollars, or both such imprisonment and fine.”); § 18-1.3-504(1), C.R.S. 2019 (“Any misdemeanor or petty offense defined by state statute without specification of its class shall be punishable as provided in the statute defining it.”); § 18-1.3-505(1), C.R.S. 2019 (“In all cases where an offense is denominated a misdemeanor and no penalty is fixed in the statute therefor, the punishment shall be imprisonment for not more than + three hundred sixty-four days in the county jail, or a fine of not more than one thousand dollars, or both imprisonment and fine.”). Accordingly, the Committee has concluded that the offense is a class 1 misdemeanor, *see* § 18-5-209(4), which can be elevated to a class 6 felony if the prosecution carries its burden of proof with respect to the sentencing enhancement provision in section 18-5-209(5), C.R.S. 2019. *See* Instruction 5-2:15.INT (issuing a false financial statement (obtaining a financial transaction device)—interrogatory (use of two or more devices)).

4. + In 2019, the Committee updated a quotation in Comment 3 pursuant to a legislative amendment. *See* Ch. 59, sec. 3, § 18-1.3-505(1), 2019 Colo. Sess. Laws 201, 202.

### 5-2:15.INT

#### **Issuing a False Financial Statement (Obtaining a Financial Transaction Device)—Interrogatory (Use of Two or More Devices)**

**If you find the defendant not guilty of issuing a false financial statement (obtaining a financial transaction device), you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of issuing a false financial statement (obtaining a financial transaction device), you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:**

**Did the defendant use multiple financial transaction devices issued in reliance upon multiple false**

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**financial statements to obtain something of value?  
(Answer “Yes” or “No”)**

**The defendant used multiple financial transaction devices issued in reliance upon multiple false financial statements to obtain something of value only if:**

- 1. he [she] committed the offense of false financial statement by obtaining two or more financial transaction devices by making two or more false financial statements and using those financial transaction devices to obtain property or services or money.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you unanimously decide the prosecution has met this burden with regard to the same two or more financial transaction devices, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden with regard to the same two or more financial transaction devices, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

- 1. See § 18-5-209(5), C.R.S. 2019.**

**5-2:16**

**Receiving Deposits in a Failing Financial Institution**

**The elements of the crime of receiving deposits in a failing financial institution are:**



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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. was an officer, manager, or other person participating in the direction of a financial institution, and
  5. received or permitted the receipt of a deposit or investment,
  6. knowing that the institution was insolvent.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of receiving deposits in a failing financial institution.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of receiving deposits in a failing financial institution.

### COMMENT

1. See § 18-5-210, C.R.S. 2019.

2. See Instruction F:183.3 (defining "insolvent"); Instruction F:195 (defining "knowingly").

3. See Op. Colo. Att'y Gen. File No. ORL8805828/AQX, Dec. 12, 1988, 1988 WL 410731 ("The management of an insolvent federally-chartered savings and loan association may not be prosecuted by the State under section 18-5-210 . . . because Congress has impliedly preempted this type of state regulation of such institutions through a pervasive scheme of legislation. The management of an insolvent state-



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chartered savings and loan association which is operating (and accepting deposits) under a binding supervisory agreement, entered into with the [Federal Savings and Loan Insurance Corporation (FSLIC)] pursuant to federal law, is also shielded from prosecution by the State under § 18-5-210, due to a conflicting, superseding federal regulatory scheme. However, the management of an insolvent state-chartered savings and loan association which is not operating under a federally authorized supervisory agreement with the FSLIC and continues to accept deposits would be subject to the provisions of § 18-5-210.”).

**5-2:17**

### **Insurance Fraud (Application)**

**The elements of the crime of insurance fraud (application) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with an intent,**
- 4. to defraud,**
- 5. presented or caused to be presented in written, verbal, or digital form an application or request for the issuance, modification, or renewal of an insurance policy, which application or request, or documentation in support of such application or request, contained false material information or withheld material information that was requested by the insurer and resulted in the issuance of an insurance policy or insurance coverage for the applicant or another.**

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of insurance fraud (application).**

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of insurance fraud (application).**

### **COMMENT**

1. *See* § 18-5-211(1)(a), C.R.S. 2019.

2. *See* Instruction F:183.7 (defining “insurance”); Instruction F:185 (defining “with intent”); Instruction F:219.5 (defining “material information”).

3. In 2017, the Committee modified the fifth element pursuant to a legislative amendment. *See* Ch. 68, sec. 1, § 18-5-211(1)(a), 2017 Colo. Sess. Laws 214, 214.

### **5-2:18**

#### **Insurance Fraud (Claim)**

**The elements of the crime of insurance fraud (claim) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with an intent,**
- 4. to defraud,**
- 5. presented or caused to be presented any insurance claim, which claim contained false material information or withheld material information.**

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements be-**

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yond a reasonable doubt, you should find the defendant guilty of insurance fraud (claim).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of insurance fraud (claim).

### COMMENT

1. *See* § 18-5-211(1)(b), C.R.S. 2019.

2. *See* Instruction F:54.5 (defining “claim”); Instruction F:185 (defining “with intent”); Instruction F:219.5 (defining “material information”).

3. In 2017, the Committee modified the fifth element pursuant to a legislative amendment. *See* Ch. 68, sec. 1, § 18-5-211(1)(b), 2017 Colo. Sess. Laws 214, 214.

### 5-2:19

#### Insurance Fraud (Vehicular)

The elements of the crime of insurance fraud (vehicular) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with an intent,
4. to defraud,
5. for the purpose of presenting any false or fraudulent insurance claim,
6. caused or participated, or purported to be involved, in a vehicular collision, or any other vehicular accident.



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**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of insurance fraud (vehicular).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of insurance fraud (vehicular).**

### **COMMENT**

1. See § 18-5-211(1)(c), C.R.S. 2019.

2. See Instruction F:54.5 (defining "claim"); Instruction F:183.7 (defining "insurance"); Instruction F:185 (defining "with intent").

### **5-2:20**

#### **Insurance Fraud (Preexisting)**

**The elements of the crime of insurance fraud (preexisting) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with an intent,**
- 4. to defraud,**
- 5. presented or caused to be presented an insurance claim where the loss or damage claimed occurred outside of the period of time that coverage was in effect for the applicable contract of insurance or policy, and**

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**6. doing so was not otherwise permitted under the contract of insurance or policy.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of insurance fraud (preexisting).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of insurance fraud (preexisting).**

**COMMENT**

1. See § 18-5-211(1)(d), C.R.S. 2019.

2. See Instruction F:54.5 (defining "claim"); Instruction F:183.7 (defining "insurance"); Instruction F:185 (defining "with intent").

3. In 2017, pursuant to a legislative amendment, the Committee modified this instruction and split the fifth element into two separate elements. See Ch. 68, sec. 1, § 18-5-211(1)(d), 2017 Colo. Sess. Laws 214, 214.

**5-2:21**

**Insurance Fraud (Claim Support or Opposition)**

**The elements of the crime of insurance fraud (claim support or opposition) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with an intent,**
- 4. to defraud,**

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5. presented or caused to be presented any written, verbal, or digital material or statement as part of, in support of or in opposition to, a claim for payment or other benefit pursuant to an insurance policy,

6. knowing that the material or statement contained false material information or withheld material information.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of insurance fraud (claim support or opposition).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of insurance fraud (claim support or opposition).

### **COMMENT**

1. *See* § 18-5-211(1)(e), C.R.S. 2019.

2. *See* Instruction F:54.5 (defining “claim”); Instruction F:183.7 (defining “insurance”); Instruction F:185 (defining “with intent”); Instruction F:219.5 (defining “material information”).

3. In 2017, the Committee modified the fifth and sixth elements pursuant to a legislative amendment. *See* Ch. 68, sec. 1, § 18-5-211(1)(e), 2017 Colo. Sess. Laws 214, 215.

## **5-2:22**

### **Insurance Fraud (Premium Funds)**

The elements of the crime of insurance fraud (premium funds) are:



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1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. moved, diverted, or misappropriated premium funds belonging to an insurer or unearned premium funds belonging to an insured or applicant for insurance from a trust or other account without the authorization of the owner of the funds or other lawful justification.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of insurance fraud (premium funds).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of insurance fraud (premium funds).

### COMMENT

1. See § 18-5-211(2), C.R.S. 2019.

2. See Instruction F:54.5 (defining “claim”); Instruction F:183.7 (defining “insurance”); Instruction F:183.8 (defining “insurance producer”); Instruction F:195 (defining “knowingly”).

3. In 2017, pursuant to a legislative amendment, the Committee removed the fourth element, renumbered the subsequent elements, changed the phrase “producer’s trust” to “trust,” and removed the phrase “insurance producer or agent” from the instruction’s title. See Ch. 68, sec. 1, § 18-5-211(2), 2017 Colo. Sess. Laws 214, 215.

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**5-2:23**

### **Insurance Fraud (False Information)**

**The elements of the crime of insurance fraud (false information) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with an intent,**
- 4. to defraud,**
- 5. made, altered, presented, or caused to be presented a certificate or other evidence of the existence of insurance in any form that contained false material information or omitted material information.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of insurance fraud (false information).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of insurance fraud (false information).**

#### **COMMENT**

**1. See § 18-5-211(3), C.R.S. 2019.**

**2. See Instruction F:54.5 (defining "claim"); Instruction F:183.7 (defining "insurance"); Instruction F:183.8 (defining "insurance producer"); Instruction F:185 (defining "with intent"); Instruction F:219.5**

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(defining “material information”); *see also* Instruction F:385 (defining “utter” for purposes of forgery and other offenses in Article 5, Part 1).

3. In 2017, pursuant to a legislative amendment, the Committee removed the fifth element, renumbered the subsequent elements, modified the new fifth element, removed the phrase “insurance producer or agent” from the instruction’s title, and added a cross-reference to Instruction F:219.5 in Comment 2. *See* Ch. 68, sec. 1, § 18-5-211(3), 2017 Colo. Sess. Laws 214, 215.

### **CHAPTER 5-3**

## **FRAUDULENT AND DECEPTIVE SALES AND BUSINESS PRACTICES**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2015.

#### **5-3:01**

### **Fraud in Effecting Sales (False Weight or Measure)**

The elements of the crime of fraud in effecting sales (false weight or measure) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. in the course of business,
5. used or possessed for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide



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**the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraud in effecting sales (false weight or measure).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of fraud in effecting sales (false weight or measure).**

### **COMMENT**

1. *See* § 18-5-301(1)(a), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

### **5-3:02**

#### **Fraud in Effecting Sales (Less Than Represented Quantity)**

**The elements of the crime of fraud in effecting sales (less than represented quantity) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. in the course of business,**
- 5. sold, offered, or exposed for sale or delivered less than the represented quantity of any commodity or service.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraud in effecting sales (less than represented quantity).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of fraud in effecting sales (less than represented quantity).

COMMENT

1. See § 18-5-301(1)(b), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).

5-3:03

**Fraud in Effecting Sales (More Than Represented Quantity)**

The elements of the crime of fraud in effecting sales (more than represented quantity) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. in the course of business,
5. took or attempted to take more than the represented quantity of any commodity or service,
6. when as buyer he [she] furnished the weight or measure.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraud in effecting sales (more than represented quantity).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of fraud in effecting sales (more than represented quantity).

### COMMENT

1. See § 18-5-301(1)(c), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

### 5-3:04

#### Fraud in Effecting Sales (Adulterated or Mislabeled)

The elements of the crime of fraud in effecting sales (adulterated or mislabeled) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. in the course of business,
5. sold, offered, or exposed for sale,
6. an adulterated or mislabeled commodity.
- [7. and that the defendant’s conduct was not



legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraud in effecting sales (adulterated or mislabeled).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of fraud in effecting sales (adulterated or mislabeled).

COMMENT

1. See § 18-5-301(1)(d), C.R.S. 2019.

2. See Instruction F:09.5 (defining “adulterated”); Instruction F:195 (defining “knowingly”); Instruction F:229.5 (defining “mislabeled”).

5-3:05

**Fraud in Effecting Sales (False or Misleading)**

The elements of the crime of fraud in effecting sales (false or misleading) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. in the course of business,
5. made a false or misleading statement,
6. in any advertisement addressed to the public or to a substantial segment thereof,
7. for the purpose of promoting the purchase or sale of property or services.

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**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraud in effecting sales (false or misleading).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of fraud in effecting sales (false or misleading).**

### **COMMENT**

1. *See* § 18-5-301(1)(e), C.R.S. 2019.
2. *See* Instruction F:195 (defining “knowingly”).
3. Section 18-5-303(2), C.R.S. 2019, provides as follows:

It shall be an affirmative defense that a television or radio broadcasting station or a publisher or printer of a newspaper, magazine, or other form of printed advertising which broadcasted, published, or printed a false advertisement prohibited by section 18-5-301(1)(e) or a bait advertisement prohibited by subsection (1) of this section or a telephone company which furnished service to a subscriber did so without knowledge of the advertiser's or subscriber's intent, plan, or purpose.

However, the Committee has not drafted a model affirmative defense instruction.

## **5-3:06**

### **Selling Land Twice**

**The elements of the crime of selling land twice are:**

1. **That the defendant,**
2. **in the State of Colorado, at or about the date and place charged,**

3. with intent,
4. to defraud,
5. after once selling, bartering, or disposing of any land, or executing any bond or agreement for sale of any land,
6. again sold, bartered, or disposed of the same tract of land or any part thereof, or executed any bond or agreement to sell or barter or dispose of the same land or any part thereof,
7. to any other person,
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of selling land twice.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of selling land twice.

#### COMMENT

1. See § 18-5-302(1), C.R.S. 2019.
2. See Instruction F:185 (defining "with intent").
3. The term "defraud" is not defined by statute.

**5-3:07**

### **False Representation Concerning Ownership of Land**

The elements of the crime of false representation concerning ownership of land are:



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- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. made a false representation concerning the existence of an ownership interest in land which he [she] had as a seller or which his [her] principal had, and**
- 5. which was relied upon.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false representation concerning ownership of land.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false representation concerning ownership of land.**

### **COMMENT**

**1. See § 18-5-302(2), C.R.S. 2019.**

**2. See Instruction F:195 (defining “knowingly”).**

**3. See People v. Alexander, 663 P.2d 1024, 1028–30 (Colo. 1983) (section 18-5-302(2) requires proof of actual reliance by the victim, without regard to what a reasonable person would have done).**

5-3:08

**Noncompliance With a Lien Waiver for a Construction Loan**

The elements of the crime of noncompliance with a lien waiver for a construction loan are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. signed a lien waiver for a construction loan [that contained a statement, by the defendant, providing in substance that all debts owed to any third party by the defendant, and relating to the goods or services covered by the waiver of lien rights, had been paid or would be timely paid], and
  5. failed to timely pay any debt resulting from a construction agreement covered by the waiver.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of noncompliance with a lien waiver for a construction loan.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of noncompliance with a lien waiver for a construction loan.

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### **COMMENT**

1. *See* § 18-5-302(3), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”).

3. Because section 18-5-302(3) specifies that the lien waiver for a construction loan must have been one “under section 38-22-119,” the requirements of section 38-22-119 are reflected in the fourth element.

4. Section 18-5-302(3) includes the following excepting language after the provision establishing the offense as a class one misdemeanor: “unless there is a bona fide dispute as to the existence or amount of the debt.” However, the Committee has not drafted a model affirmative defense instruction.

**5-3:09**

### **Bait Advertising**

**The elements of the crime of bait advertising are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with the intent, plan, or purpose,**
- 4. not to sell or provide the advertised property or services at all, or not at the price at which he [she] offered them, or not in a quantity sufficient to meet the reasonable expected public demand, unless the quantity was specifically stated in the advertisement,**
- 5. offered property or services as part of a scheme or plan,**
- 6. in any manner, including advertising or any other means of communication.**
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**



After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bait advertising.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of bait advertising.

#### COMMENT

1. See § 18-5-303(1), C.R.S. 2019.
2. See Instruction F:185 (defining “with intent”).
3. Section 18-5-303(2), C.R.S. 2019, provides as follows:

It shall be an affirmative defense that a television or radio broadcasting station or a publisher or printer of a newspaper, magazine, or other form of printed advertising which broadcasted, published, or printed a false advertisement prohibited by section 18-5-301(1)(e) or a bait advertisement prohibited by subsection (1) of this section or a telephone company which furnished service to a subscriber did so without knowledge of the advertiser’s or subscriber’s intent, plan, or purpose.

However, the Committee has not drafted a model affirmative defense instruction.

### 5-3:10

#### False Statements As to Circulation

The elements of the crime of false statements as to circulation are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. engaged in the publication of any newspaper, magazine, periodical, or other advertising me-

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dium published in the state of Colorado [, or was an employee of any such publisher], and

5. made any statement concerning the circulation of the newspaper, magazine, periodical, or other advertising medium which was untrue or misleading,

6. where such publisher fixed his [her] charges for advertising space in the publication on the amount of its circulation.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false statements as to circulation.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of false statements as to circulation.

### **COMMENT**

1. See § 18-5-304, C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).

### **5-3:11**

#### **Altering an Identification Number**

The elements of the crime of altering an identification number are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

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- 3. with intent,**
- 4. that identification of an article be hindered or prevented,**
- 5. obscured an identification number or in the course of business sold, offered for sale, leased, or otherwise disposed of an article,**
- 6. knowing that an identification number thereon was obscured.**
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of altering an identification number.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of altering an identification number.**

**COMMENT**

1. See § 18-5-305(1), C.R.S. 2019.

2. See Instruction F:174.7 (defining “identification number”); Instruction F:185 (defining “with intent”); Instruction F:246.5 (defining “obscure”).

**5-3:12.SP**

**Altering an Identification Number—Special Instruction  
(Possession of an Article With an Obscured Identification  
Number)**

**Evidence that the defendant possessed an article on which an identification number was obscured gives rise to a permissible inference that the defen-**



dant obscured the number with intent to hinder or prevent identification of the article, and that he [she] knew that the identification number was obscured [, unless, prior to his [her] arrest or the issuance of a warrant for a search of the premises where the article was kept, whichever was earlier, he [she] had reported possession of the article to the police or other appropriate law enforcement agency].

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

#### COMMENT

1. *See* § 18-5-305(4), C.R.S. 2019.

2. *See* *People in re R.M.D.*, 829 P.2d 852 (Colo. 1992) (construing the “prima facie” proof provision of section 18-4-406 as establishing a permissible inference); *see generally* *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

#### 5-3:13

### Prohibited Practices by Private Employment Agencies (Fictitious Job or False Representation)

The elements of the crime of prohibited practice by a private employment agency (fictitious job or false representation) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

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**3. knowingly,**

**4. was a private employment agency, or an employee of such agency, and**

**5. sent an applicant, or caused an applicant to be sent, to any fictitious job or position; or made any false representation, or caused any false representation to be made, concerning the availability of employment.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited practice by a private employment agency (fictitious job or false representation).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited practice by a private employment agency (fictitious job or false representation).**

**COMMENT**

1. See § 18-5-307(5.5)(a), C.R.S. 2019.

2. See Instruction F:21.5 (defining “applicant”); Instruction F:121.5 (defining “employment”); Instruction F:195 (defining “knowingly”); Instruction F:285.5 (defining “private employment agency”).

**5-3:14**

**Prohibited Practices by Private Employment Agencies  
(Strike or Lockout)**

**The elements of the crime of prohibited practice by a private employment agency (strike or lockout) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. was a private employment agency, or an employee of such agency, and**
- 5. sent an applicant, or caused an applicant to be sent, to any place where a strike or lockout existed or was impending,**
- 6. without notifying the applicant of the circumstances.**
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited practice by a private employment agency (strike or lockout).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited practice by a private employment agency (strike or lockout).**



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### COMMENT

1. See § 18-5-307(5.5)(b), C.R.S. 2019.

2. See Instruction F:21.5 (defining “applicant”); Instruction F:121.5 (defining “employment”); Instruction F:195 (defining “knowingly”); Instruction F:285.5 (defining “private employment agency”).

### 5-3:15

#### **Prohibited Practices by Private Employment Agencies (Conduct With Employer)**

The elements of the crime of prohibited practice by a private employment agency (conduct with employer) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a private employment agency, or an employee of such agency, and
5. conspired or arranged with any employer to secure the discharge of an employee; or gave or received any gratuity or divided or shared with an employer any fee, charge, or remuneration received from any applicant for employment; or caused any of the foregoing acts to be done.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited practice by a private employment agency (conduct with employer).

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited practice by a private employment agency (conduct with employer).**

### **COMMENT**

1. *See* § 18-5-307(5.5)(c), C.R.S. 2019.

2. *See* Instruction F:21.5 (defining “applicant”); Instruction F:121.5 (defining “employment”); Instruction F:195 (defining “knowingly”); Instruction F:285.5 (defining “private employment agency”); *see also* Instruction G2:05 (conspiracy).

### **5-3:16**

#### **Prohibited Practices by Private Employment Agencies (Circulation or Publication)**

**The elements of the crime of prohibited practice by a private employment agency (circulation or publication) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a private employment agency, or an employee of such agency, and
5. circulated or published, by advertisement or otherwise, any false statements or representations to persons seeking employment or to employers seeking employees; or caused any of the foregoing acts to be done.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited practice by a private employment agency (circulation or publication).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited practice by a private employment agency (circulation or publication).

COMMENT

1. See § 18-5-307(5.5)(d), C.R.S. 2019.

2. See Instruction F:21.5 (defining “applicant”); Instruction F:121.5 (defining “employment”); Instruction F:195 (defining “knowingly”); Instruction F:285.5 (defining “private employment agency”).

5-3:17

**Prohibited Practices by Private Employment Agencies  
(Failure to Refund)**

The elements of the crime of prohibited practice by a private employment agency (failure to refund) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a private employment agency, or an employee of such agency, and
5. failed to refund, or caused a failure to refund, fees to an applicant where such refund was due pursuant to law.
- [6. and that the defendant’s conduct was not



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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited practice by a private employment agency (failure to refund).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited practice by a private employment agency (failure to refund).**

### **COMMENT**

1. See § 18-5-307(5.5)(e), C.R.S. 2019.

2. See Instruction F:21.5 (defining “applicant”); Instruction F:121.5 (defining “employment”); Instruction F:195 (defining “knowingly”); Instruction F:285.5 (defining “private employment agency”).

3. The court should draft a special instruction explaining the relevant portion(s) of the refund provisions in section 18-5-307(5), C.R.S. 2019.

### **5-3:18**

#### **Prohibited Practices by Private Employment Agencies (Fee-Paid Position)**

**The elements of the crime of prohibited practice by a private employment agency (fee-paid position) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**

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**4. was a private employment agency, or an employee of such agency, and**

**5. advertised or represented the availability of fee-paid positions where no cost would accrue to the applicant if hired in such a manner as to confuse such position with other available positions which were not available on a fee-paid basis; or caused any of the foregoing acts to be done.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited practice by a private employment agency (fee-paid position).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited practice by a private employment agency (fee-paid position).**

**COMMENT**

**1. See § 18-5-307(5.5)(f), C.R.S. 2019.**

**2. See Instruction F:21.5 (defining “applicant”); Instruction F:121.5 (defining “employment”); Instruction F:146.5 (defining “fee-paid position”); Instruction F:195 (defining “knowingly”); Instruction F:285.5 (defining “private employment agency”).**

**5-3:19**

**Prohibited Practices by Private Employment Agencies (No Fee Basis)**

**The elements of the crime of prohibited practice by a private employment agency (no fee basis) are:**

**1. That the defendant,**

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**2. in the State of Colorado, at or about the date and place charged,**

**3. knowingly,**

**4. was a private employment agency, or an employee of such agency, and**

**5. advertised or represented that an available position was available on a free or no fee basis or otherwise indicated that no charge or cost would accrue to anyone when in fact the employer was obligated to pay a fee contingent upon the acceptance of employment of the applicant; or caused any of the foregoing acts to be done.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited practice by a private employment agency (no fee basis).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited practice by a private employment agency (no fee basis).**

### **COMMENT**

**1. See § 18-5-307(5.5)(g), C.R.S. 2019.**

**2. See Instruction F:21.5 (defining “applicant”); Instruction F:121.5 (defining “employment”); Instruction F:195 (defining “knowingly”); Instruction F:285.5 (defining “private employment agency”); see also Instruction F:146.5 (defining “fee-paid position”).**



5-3:20

**Prohibited Practices by Private Employment Agencies  
(Advertising for Self)**

The elements of the crime of prohibited practice by a private employment agency (advertising for self) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a private employment agency, or an employee of such agency, and
5. advertised for, or caused the advertising of, any position, including personnel for its own staff,
6. without identifying in the advertisement that it was a private employment agency.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited practice by a private employment agency (advertising for self).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited practice by a private employment agency (advertising for self).

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### **COMMENT**

1. See § 18-5-307(5.5)(h), C.R.S. 2019.

2. See Instruction F:21.5 (defining “applicant”); Instruction F:121.5 (defining “employment”); Instruction F:195 (defining “knowingly”); Instruction F:285.5 (defining “private employment agency”).

### **5-3:21**

#### **Electronic Mail Fraud (Accessing a Protected Computer Without Authorization)**

The elements of the crime of electronic mail fraud (accessing a protected computer without authorization) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. accessed a protected computer without authorization, and
  5. intentionally initiated the transmission of multiple commercial electronic mail messages from or through such computer [, or conspired to do so].
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of electronic mail fraud (accessing a protected computer without authorization).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more

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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of electronic mail fraud (accessing a protected computer without authorization).**

### COMMENT

1. This instruction is patterned on 18 U.S.C. § 1037(a)(1), which is incorporated into section 18-5-308(1), C.R.S. 2019 (“A person commits electronic mail fraud if he [she] violates any provision of 18 U.S.C. sec. 1037(a).”). However, users should be aware of one deliberate omission from the model instruction.

Although 18 U.S.C. § 1037(a) requires proof that the fraud “affect[ed] interstate or foreign commerce,” the General Assembly declared “that the intent of . . . section 18-5-308, C.R.S., is to exercise state authority in a manner consistent with, and to the maximum extent permissible under, the federal preemption provisions of 15 U.S.C. sec. 7707(b).” § 6-1-702.5(6)(c), C.R.S. 2019. And 15 U.S.C. § 7707(b) states, in relevant part, that it:

supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto.

Therefore, because 15 U.S.C. § 7707(b) does not purport to preempt state statutes that criminalize false or deceptive electronic mail messages affecting *intrastate* commerce, it appears the General Assembly did not intend to incorporate the interstate and foreign commerce language of 15 U.S.C. § 7707(b) into section 18-5-308(1). Accordingly, this language, which relates to the establishment of federal jurisdiction, is not included in the above instruction.

2. See Instruction F:57.3 (defining “commercial electronic mail message”); Instruction F:195 (defining “knowingly”); Instruction F:239.5 (defining “multiple”); see also 18 U.S.C. § 1037(4) (2014) (“Any other term has the meaning given that term by [Section 3 of the CAN-SPAM Act of 2003, which is codified as 15 U.S.C. § 7702].”).

3. Section 18-5-308(2), C.R.S. 2019, establishes an exemption from criminal liability: “This section shall not apply to a provider of internet access service, as defined in 47 U.S.C. sec. 231, who does not initiate the commercial electronic mail message.” However, the Committee has not drafted a model affirmative defense instruction.



**5-3:22**

**Electronic Mail Fraud (Using a Protected Computer)**

**The elements of the crime of electronic mail fraud (using a protected computer) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. used a protected computer to relay or retransmit multiple commercial electronic mail messages,**
- 5. with the intent to deceive or mislead recipients, or any internet access service, as to the origin of such messages.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of electronic mail fraud (using a protected computer).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of electronic mail fraud (using a protected computer).**

**COMMENT**

1. This instruction is patterned on 18 U.S.C. § 1037(a)(2), which is incorporated into section 18-5-308(1), C.R.S. 2019 ("A person commits electronic mail fraud if he [she] violates any provision of 18 U.S.C. sec.

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1037(a).”). *See* Instruction 5-3:21, Comment 1 (discussing interstate and intrastate commerce).

2. *See* Instruction F:57.3 (defining “commercial electronic mail message”); Instruction F:239.5 (defining “multiple”); *see also* 18 U.S.C. § 1037(4) (2014). (“Any other term has the meaning given that term by [Section 3 of the CAN-SPAM Act of 2003, which is codified as 15 U.S.C. § 7702].”).

3. It is unclear whether the term “knowingly,” which is incorporated from 18 U.S.C. § 1037(a), is to be defined according to federal or state law.

4. Section 18-5-308(2), C.R.S. 2019, establishes an exemption from criminal liability: “This section shall not apply to a provider of internet access service, as defined in 47 U.S.C. sec. 231, who does not initiate the commercial electronic mail message.” However, the Committee has not drafted a model affirmative defense instruction.

### 5-3:23

#### Electronic Mail Fraud (Falsified Header)

The elements of the crime of electronic mail fraud (falsified header) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. materially falsified header information in multiple commercial electronic mail messages, and
5. intentionally initiated the transmission of such messages.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements be-

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**yond a reasonable doubt, you should find the defendant guilty of electronic mail fraud (falsified header).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of electronic mail fraud (falsified header).**

### **COMMENT**

1. This instruction is patterned on 18 U.S.C. § 1037(a)(3), which is incorporated into section 18-5-308(1), C.R.S. 2019 (“A person commits electronic mail fraud if he [she] violates any provision of 18 U.S.C. sec. 1037(a).”). *See* Instruction 5-3:21, Comment 1 (discussing interstate and intrastate commerce).

2. *See* Instruction F:57.3 (defining “commercial electronic mail message”); Instruction F:219.7 (defining “materially”); Instruction F:239.5 (defining “multiple”); *see also* 18 U.S.C. § 1037(4) (2014) (“Any other term has the meaning given that term by [Section 3 of the CAN-SPAM Act of 2003, which is codified as 15 U.S.C. § 7702].”).

3. It is unclear whether the term “knowingly,” which is incorporated from 18 U.S.C. § 1037(a), is to be defined according to federal or state law.

4. Section 18-5-308(2), C.R.S. 2019, establishes an exemption from criminal liability: “This section shall not apply to a provider of internet access service, as defined in 47 U.S.C. sec. 231, who does not initiate the commercial electronic mail message.” However, the Committee has not drafted a model affirmative defense instruction.

### **5-3:24**

#### **Electronic Mail Fraud (Falsified Registration)**

**The elements of the crime of electronic mail fraud (falsified registration) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. registered, using information that materially**



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falsified the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names, and

5. intentionally initiated the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of electronic mail fraud (falsified registration).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of electronic mail fraud (falsified registration).

### COMMENT

1. This instruction is patterned on 18 U.S.C. § 1037(a)(4), which is incorporated into section 18-5-308(1), C.R.S. 2019 (“A person commits electronic mail fraud if he [she] violates any provision of 18 U.S.C. sec. 1037(a).”). *See* Instruction 5-3:21, Comment 1 (discussing interstate and intrastate commerce).

2. *See* Instruction F:57.3 (defining “commercial electronic mail message”); Instruction F:219.7 (defining “materially”); Instruction F:239.5 (defining “multiple”); *see also* 18 U.S.C. § 1037(4) (2014) (“Any other term has the meaning given that term by [Section 3 of the CAN-SPAM Act of 2003, which is codified as 15 U.S.C. § 7702].”).

3. It is unclear whether the term “knowingly,” which is incorporated from 18 U.S.C. § 1037(a), is to be defined according to federal or state law.

4. Section 18-5-308(2), C.R.S. 2019, establishes an exemption from criminal liability: “This section shall not apply to a provider of internet access service, as defined in 47 U.S.C. sec. 231, who does not initiate

## **FRAUDULENT AND DECEPTIVE SALES AND BUSINESS PRACTICES**

the commercial electronic mail message.” However, the Committee has not drafted a model affirmative defense instruction.

**5-3:25**

### **Electronic Mail Fraud (False Representation As to Registrant)**

**The elements of the crime of electronic mail fraud (false representation as to registrant) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. falsely represented himself [herself] to be the registrant or the legitimate successor in interest to the registrant of five or more internet protocol addresses, and**
- 5. intentionally initiated the transmission of multiple commercial electronic mail messages from such addresses [, or conspired to do so].**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of electronic mail fraud (false representation as to registrant).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of electronic mail fraud (false representation as to registrant).**

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### COMMENT

1. This instruction is patterned on 18 U.S.C. § 1037(a)(5), which is incorporated into section 18-5-308(1), C.R.S. 2019 (“A person commits electronic mail fraud if he [she] violates any provision of 18 U.S.C. sec. 1037(a).”). *See* Instruction 5-3:21, Comment 1 (discussing interstate and intrastate commerce).

2. *See* Instruction F:57.3 (defining “commercial electronic mail message”); Instruction F:195 (defining “knowingly”); Instruction F:239.5 (defining “multiple”); *see also* 18 U.S.C. § 1037(4) (2014) (“Any other term has the meaning given that term by [Section 3 of the CAN-SPAM Act of 2003, which is codified as 15 U.S.C. § 7702].”).

3. Section 18-5-308(2), C.R.S. 2019, establishes an exemption from criminal liability: “This section shall not apply to a provider of internet access service, as defined in 47 U.S.C. sec. 231, who does not initiate the commercial electronic mail message.” However, because the applicability of this exemption will rarely depend on the resolution of a disputed factual issue, the Committee has not drafted a model affirmative defense instruction.

### 5-3:26

#### Money Laundering (Conducting or Attempting)

**The elements of the crime of money laundering (conducting or attempting) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with the intent to promote the commission of a criminal offense; or with knowledge or a belief that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of a criminal offense; or with knowledge or a belief that the transaction was designed in whole or in part to avoid a transaction reporting requirement under [insert description of relevant federal law],**
- 4. conducted or attempted to conduct a financial transaction that involved money or any other**



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**thing of value that he [she] knew or believed to be the proceeds, in any form, of a criminal offense.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of money laundering (conducting or attempting).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of money laundering (conducting or attempting).**

### COMMENT

1. *See* § 18-5-309(1)(a), C.R.S. 2019.

2. *See* Instruction F:67.5 (defining “conducts or attempts to conduct a financial transaction”); Instruction F:152.5 (defining “financial transaction”); Instruction F:185 (defining “with intent”).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

### 5-3:27

#### **Money Laundering (Transported, Transmitted, or Transferred)**

**The elements of the crime of money laundering (transported, transmitted, or transferred) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**

## COLORADO JURY INSTRUCTIONS—CRIMINAL

3. with the intent to promote the commission of a criminal offense; or with knowledge or a belief that the monetary instrument or moneys represented the proceeds of a criminal offense and that the transportation, transmission, or transfer was designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or control of the proceeds of a criminal offense; or with knowledge or a belief that the transaction was designed in whole or in part to avoid a transaction reporting requirement under [insert description of relevant federal law],

4. transported, transmitted, or transferred a monetary instrument or moneys.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of money laundering (transported, transmitted, or transferred).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of money laundering (transported, transmitted, or transferred).

### COMMENT

1. See § 18-5-309(1)(b), C.R.S. 2019.

2. See Instruction F:152.5 (defining “financial transaction”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:232.5 (defining “monetary instrument”); Instruction F:312.5 (defining “represent”); Instruction F:374.5 (defining “transaction”).

5-3:28

**Money Laundering (Property)**

**The elements of the crime of money laundering (property) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. intentionally,**
- 4. conducted a financial transaction involving property that was represented to be the proceeds of a criminal offense, or involving property that the defendant knew or believed to have been used to conduct or facilitate a criminal offense, to promote the commission of a criminal offense; conceal or disguise the nature, location, source, ownership, or control of property that the defendant believed to be the proceeds of a criminal offense; or avoid a transaction reporting requirement under [insert description of relevant federal law].**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of money laundering (property).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of money laundering (property).**



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### **COMMENT**

1. *See* § 18-5-309(1)(c), C.R.S. 2019.

2. *See* Instruction F:67.5 (defining “conducts or attempts to conduct a financial transaction”); Instruction F:152.5 (defining “financial transaction”); Instruction F:185 (defining “intentionally”); Instruction F:232.5 (defining “monetary instrument”); Instruction F:312.5 (defining “represent”); Instruction F:374.5 (defining “transaction”).

## **CHAPTER 5-4**

### **BRIBERY AND RIGGING OF CONTESTS**

#### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2015.

#### **5-4:01**

#### **Commercial Bribery—Breach of a Duty of Fidelity**

**The elements of the crime of commercial bribery (breach of a duty of fidelity) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. solicited, accepted, or agreed to accept any benefit as consideration for,**
- 5. violating or agreeing to violate a duty of fidelity to which he [she] was subject,**
- 6. as agent or employee; or trustee, guardian, or other fiduciary; or lawyer, physician, accountant, appraiser, or other professional adviser; or officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or duly**

## BRIBERY AND RIGGING OF CONTESTS

elected or appointed representative or trustee of a labor organization or employee welfare trust fund; or arbitrator or other purportedly disinterested adjudicator or referee.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of commercial bribery (breach of a duty of fidelity).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of commercial bribery (breach of a duty of fidelity).

### COMMENT

1. See § 18-5-401(1), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. The term “consideration” is not defined in section 18-5-401. See, e.g., *Black’s Law Dictionary* 370 (10th ed. 2014) (defining “consideration” as: “Something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee.”).

4. See *People v. Lee*, 717 P.2d 493, 496 (Colo. 1986) (the commercial bribery statute does not unconstitutionally delegate legislative power to private persons in violation of the distribution of powers doctrine contained in Article III of the Colorado Constitution, notwithstanding the absence of a definition of the term “duty of fidelity”; because the term is synonymous with the term “duty of loyalty,” which has been “defined through years of common law interpretation,” the statute does not “allow the person to whom the duty is owed unfettered discretion in defining the term”).

5-4:02

**Commercial Bribery—Breach of a Duty to Act  
Disinterestedly**

The elements of the crime of commercial bribery (breach of a duty to act disinterestedly) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. held himself [herself] out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, property, or services, and
5. solicited, accepted, or agreed to accept any benefit to alter, modify, or change his [her] selection, appraisal, or criticism.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of commercial bribery (breach of a duty to act disinterestedly).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of commercial bribery (breach of a duty to act disinterestedly).

**COMMENT**

1. See § 18-5-401(2), C.R.S. 2019.



## **BRIBERY AND RIGGING OF CONTESTS**

2. See Instruction F:195 (defining “knowingly”).

**5-4:03**

### **Commercial Bribery—Bribing Another As to a Duty of Fidelity**

**The elements of the crime of commercial bribery (bribing another as to a duty of fidelity) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. conferred or offered or agreed to confer any benefit the acceptance of which would have been consideration for another person knowingly violating or agreeing to violate a duty of fidelity to which he [she] was subject,**
- 4. as agent or employee; or trustee, guardian, or other fiduciary; or lawyer, physician, accountant, appraiser, or other professional adviser; or officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or duly elected or appointed representative or trustee of a labor organization or employee welfare trust fund; or arbitrator or other purportedly disinterested adjudicator or referee.**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of commercial bribery (bribing another as to a duty of fidelity).**

**After considering all the evidence, if you decide**

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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of commercial bribery (bribing another as to a duty of fidelity).**

### COMMENT

1. See § 18-5-401(1), (3), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The term “consideration” is not defined in section 18-13-125. See, e.g., *Black’s Law Dictionary* 370 (10th ed. 2014) (defining “consideration” as: “Something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee.”).

### 5-4:04

## **Commercial Bribery—Bribing Another As to a Duty to Act Disinterestedly**

**The elements of the crime of commercial bribery (bribing another as to a duty to act disinterestedly) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. conferred or offered agreed to confer any benefit,
4. to a person who held himself [herself] out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, property, or services to knowingly alter, modify, or change his [her] selection, appraisal, or criticism.

[5. and that the defendant’s conduct was not

## **BRIBERY AND RIGGING OF CONTESTS**

**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of commercial bribery (bribing another as to a duty to act disinterestedly).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of commercial bribery (bribing another as to a duty to act disinterestedly).**

### **COMMENT**

1. *See* § 18-5-401(2), (3), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The term “consideration” is not defined in section 18-13-125. *See, e.g., Black’s Law Dictionary* 370 (10th ed. 2014) (defining “consideration” as: “Something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee.”).

### **5-4:05**

#### **Rigging a Publicly Exhibited Contest (Benefit or Threat)**

**The elements of the crime of rigging a publicly exhibited contest (benefit or threat) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with the intent to prevent a publicly exhibited**



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or advertised contest from being conducted in accordance with the rules and usages purporting to govern it,

4. conferred or offered or agreed to confer any benefit upon, or threatened any detriment to,

5. a participant, official, or other person associated with the contest or exhibition.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of rigging a publicly exhibited contest (benefit or threat).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of rigging a publicly exhibited contest (benefit or threat).

### COMMENT

1. See § 18-5-402(1)(a), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”).

### 5-4:06

#### **Rigging a Publicly Exhibited Contest (Tampering)**

The elements of the crime of rigging a publicly exhibited contest (tampering) are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

## **BRIBERY AND RIGGING OF CONTESTS**

**3. with the intent to prevent a publicly exhibited or advertised contest from being conducted in accordance with the rules and usages purporting to govern it,**

**4. tampered with any person, animal, or thing.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of rigging a publicly exhibited contest (tampering).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of rigging a publicly exhibited contest (tampering).**

### **COMMENT**

**1. See § 18-5-402(1)(b), C.R.S. 2019.**

**2. See Instruction F:185 (defining "with intent"); Instruction F:360 (defining "tamper").**

### **5-4:07**

#### **Rigging a Publicly Exhibited Contest (Soliciting or Accepting)**

**The elements of the crime of rigging a publicly exhibited contest (soliciting or accepting) are:**

**1. That the defendant,**

**2. in the State of Colorado, at or about the date and place charged,**

**3. with the intent,**

**COLORADO JURY INSTRUCTIONS—CRIMINAL**

**4. to prevent a publicly exhibited or advertised contest from being conducted in accordance with the rules and usages purporting to govern it,**

**5. knowingly,**

**6. solicited, accepted, or agreed to accept any benefit,**

**7. the conferring of which would have constituted the offense of rigging a publicly exhibited contest (benefit).**

**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of rigging a publicly exhibited contest (soliciting or accepting).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of rigging a publicly exhibited contest (soliciting or accepting).**

**COMMENT**

1. See § 18-5-402(1)(c), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. When using this model instruction, provide the jury with a copy of Instruction 5-4:05 (rigging a publicly exhibited contest (benefit)) that does not include the two final paragraphs describing the prosecution's burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.



**5-4:08**

**Rigging a Publicly Exhibited Contest (Knowledge of Rigging)**

**The elements of the crime of rigging a publicly exhibited contest (knowledge of rigging) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. engaged in, sponsored, produced, judged, or otherwise participated in a publicly exhibited or advertised contest,**
- 5. knowing that the contest was not being conducted in compliance with the rules and usages purporting to govern it, by reason of any person committing the offense of rigging a publicly exhibited contest ([benefit or threat] [tampering] [soliciting or accepting]).**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of rigging a publicly exhibited contest (knowledge of rigging).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of rigging a publicly exhibited contest (knowledge of rigging).**

## COLORADO JURY INSTRUCTIONS—CRIMINAL

### COMMENT

1. See § 18-5-402(1), (2), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. When using this model instruction, provide the jury with instruction(s) defining the relevant offense(s) without including the two final paragraphs describing the prosecution’s burden of proof. See Instructions 5-4:05 to 5-4:07. Place the elemental instruction(s) for the referenced offense(s) immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense(s).

### 5-4:09

#### **Bribery in Sports (Benefit or Threat; Sports Participant)**

**The elements of the crime of bribery in sports (benefit or threat; sports participant) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to influence a sports participant not to give his [her] best efforts in a sports contest,**
- 5. conferred or offered or agreed to confer, any benefit upon or threatened any detriment to,**
- 6. a sports participant.**

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bribery in sports (benefit or threat; sports participant).**

## BRIBERY AND RIGGING OF CONTESTS

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of bribery in sports (benefit or threat; sports participant).

### COMMENT

1. *See* § 18-5-403(2)(a), C.R.S. 2019.

2. *See* Instruction F:185 (defining “with intent”); Instruction F:350.3 (defining “sports contest”); Instruction F:350.7 (defining “sports participant”).

### 5-4:10

#### Bribery in Sports (Benefit or Threat; Sports Official)

The elements of the crime of bribery in sports (benefit or threat; sports official) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to influence a sports official to perform his [her] duties improperly,
5. conferred or offered or agreed to confer, any benefit upon or threatened any detriment to,
6. a sports official.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bribery in sports (benefit or threat; sports official).



## COLORADO JURY INSTRUCTIONS—CRIMINAL

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of bribery in sports (benefit or threat; sports official).

### COMMENT

1. See § 18-5-403(2)(b), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:350.3 (defining “sports contest”); Instruction F:350.5 (defining “sports official”).

### 5-4:11

#### **Bribery in Sports (Soliciting or Accepting; Sports Participant)**

The elements of the crime of bribery in sports (soliciting or accepting; sports participant) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a sports participant, and
5. accepted, agreed to accept, or solicited any benefit from another person,
6. upon an understanding that the defendant would thereby be influenced not to give his [her] best efforts in a sports contest.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-

## **BRIBERY AND RIGGING OF CONTESTS**

**dant guilty of bribery in sports (soliciting or accepting; sports participant).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of bribery in sports (soliciting or accepting; sports participant).**

### **COMMENT**

1. See § 18-5-403(2)(c), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:350.3 (defining “sports contest”); Instruction F:350.7 (defining “sports participant”).

### **5-4:12**

#### **Bribery in Sports (Soliciting or Accepting; Sports Official)**

**The elements of the crime of bribery in sports (soliciting or accepting; sports official) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. was a sports official, and**
- 5. accepted, agreed to accept, or solicited any benefit from another person,**
- 6. upon an understanding that the defendant would thereby be influenced to perform his [her] duties improperly.**
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**

## COLORADO JURY INSTRUCTIONS—CRIMINAL

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bribery in sports (soliciting or accepting; sports official).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of bribery in sports (soliciting or accepting; sports official).

### COMMENT

1. See § 18-5-403(2)(d), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:350.3 (defining “sports contest”); Instruction F:350.5 (defining “sports official”).

### 5-4:13

#### Bribery in Sports (Tampering)

The elements of the crime of bribery in sports (tampering) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to influence the outcome of a sports contest,
5. tampered with any sports participant, sports official, or any animal or equipment or other thing involved in the conduct or operation of a sports contest in a manner contrary to the rules and usages purporting to govern such a contest.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



## OFFENSES RELATING TO THE UNIFORM COMMERCIAL CODE

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bribery in sports (tampering).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of bribery in sports (tampering).

### COMMENT

1. *See* § 18-5-403(2)(e), C.R.S. 2019.

2. *See* Instruction F:185 (defining “with intent”); Instruction F:350.3 (defining “sports contest”); Instruction F:350.5 (defining “sports official”); Instruction F:350.7 (defining “sports participant”); Instruction F:360 (defining “tamper”).

## CHAPTER 5-5

## OFFENSES RELATING TO THE UNIFORM COMMERCIAL CODE

### CHAPTER COMMENTS

1. Many of the terms that appear in this chapter have special statutory definitions. *See* § 18-5-501, C.R.S. 2019 (“The definitions set forth in the ‘Uniform Commercial Code’, title 4, C.R.S., shall apply to sections 18-5-502 to 18-5-511.”). The Committee recommends that users review any relevant official comments when drafting definitional instructions tailored to the evidence at trial. *See* § 4-9-102, cmts. 2 to 26, C.R.S. 2019.

2. The Committee added this chapter in 2015.

### 5-5:01

#### Failure to Pay Over Assigned Accounts

The elements of the crime of failure to pay over assigned accounts are:

1. That the defendant,

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**2. in the State of Colorado, at or about the date and place charged,**

**3. willfully and wrongfully,**

**4. was, under the terms of an assignment of an account, as that term is defined in these instructions, an assignor who was permitted to collect the proceeds from the debtor to pay over any proceeds to the assignee, and**

**5. after collection of the proceeds,**

**6. failed to pay over the proceeds to the assignee.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to pay over assigned accounts.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more elements beyond a reasonable doubt, you should find the defendant not guilty of failure to pay over assigned accounts.**

**COMMENT**

1. See § 18-5-502, C.R.S. 2019.

2. See Instruction F:195 (defining “willfully”); see also § 4-9-102(a)(2), C.R.S. 2019 (defining “account”); § 4-9-102(a)(3) (defining “account debtor”).

3. The terms “assignor” and “assignee” are not defined by statute. See, e.g., *Black’s Law Dictionary*, 142, 144 (10th ed. 2014) (defining an “assignee” as “[o]ne to whom property rights or powers are transferred by another,” and an “assignor” as “[s]omeone who transfers property rights or powers to another.”).

5-5:02.INT

**Failure to Pay Over Assigned Accounts—Interrogatory  
(Amount)**

If you find the defendant not guilty of failure to pay over assigned accounts, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of failure to pay over assigned accounts, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:

**Was the amount of the proceeds withheld one thousand dollars or more? (Answer “Yes” or “No”)**

The prosecution has the burden to prove the amount of the proceeds beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

**COMMENT**

1. See § 18-5-502, C.R.S. 2019.

5-5:03

**Concealment or Removal of Secured Property**

The elements of the crime of concealment or removal of secured property are:

1. That the defendant,



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- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. gave a security interest in personal property, or had actual knowledge of a security interest in personal property given by another person, and**
- 5. during the existence of the security interest,**
- 6. concealed the encumbered property or removed the encumbered property from Colorado,**
- 7. without written consent of the secured creditor.**
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of concealment or removal of secured property.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of concealment or removal of secured property.

**COMMENT**

1. See § 18-5-504, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); § 4-1-201(b)(12), (35), (43), C.R.S. 2019 (defining “creditor,” “security interest,” and “writing”).

3. See *People v. Armijo*, 589 P.2d 935, 938 (Colo. 1979) (the statute does not require that the security interest be perfected and applies to any valid security interest, perfected or not).

5-5:04.INT

**Concealment or Removal of Secured Property—  
Interrogatory (Value)**

If you find the defendant not guilty of concealment or removal of secured property, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of concealment or removal of secured property, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:

Was the value of the property concealed or removed one thousand dollars or more? (Answer “Yes” or “No”)

The prosecution has the burden to prove the value of the property beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

COMMENT

1. See § 18-5-504, C.R.S. 2019.

5-5:05

**Failure to Pay Over Proceeds**

The elements of the crime of failure to pay over proceeds are:

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- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. gave a security interest in personal property, and**
- 4. retained possession of that property, and**
- 5. according to the terms creating such security interest, was required to account to the secured creditor for the proceeds of any sale or disposition of the encumbered property, and**
- 6. willfully and wrongfully failed to pay to the secured creditor the amounts due from the sale or disposition.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to pay over proceeds.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to pay over proceeds.**

**COMMENT**

**1. See § 18-5-505, C.R.S. 2019.**

**2. See Instruction F:195 (defining “willfully”); § 4-1-201(b)(12), (35), C.R.S. 2019 (defining “creditor” and “security interest”).**



5-5:06.INT

**Failure to Pay Over Proceeds—Interrogatory (Amount)**

If you find the defendant not guilty of failure to pay over proceeds, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of failure to pay over proceeds, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:

1. Was the amount of the proceeds the defendant wrongfully withheld one thousand dollars or more? (Answer “Yes” or “No”)

The prosecution has the burden to prove the amount of the proceeds beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

COMMENT

1. See § 18-5-505, C.R.S. 2019.

5-5:07

**Issuance of a Fraudulent Receipt**

The elements of the crime of issuance of a fraudulent receipt are:

1. That the defendant,

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- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a warehouse, or an officer, agent, or servant of a warehouse, and**
- 4. issued or aided in issuing a receipt,**
- 5. knowing that the goods for which the receipt had been issued had not been actually received by the warehouse, or were not under the warehouse's actual control at the time of issuing the receipt.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of issuance of a fraudulent receipt.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of issuance of a fraudulent receipt.**

**COMMENT**

1. *See* § 18-5-506, C.R.S. 2019.

2. *See* Instruction 161.5 (defining “goods”); Instruction F:391.5 (defining “warehouse”).

**5-5:08**

**False Statement in Receipt**

**The elements of the crime of false statement in receipt are:**

- 1. That the defendant,**

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**2. in the State of Colorado, at or about the date and place charged,**

**3. was a warehouse, or an officer, agent, or servant of a warehouse, and**

**4. fraudulently issued or aided in fraudulently issuing a receipt for goods knowing that it contained any false statement.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false statement in receipt.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false statement in receipt.**

**COMMENT**

**1. See § 18-5-507, C.R.S. 2019.**

**2. See Instruction 161.5 (defining "goods"); Instruction F:391.5 (defining "warehouse").**

**5-5:09**

**Issuance of a Duplicate Receipt Not Marked**

**The elements of the crime of issuance of a duplicate receipt not marked are:**

**1. That the defendant,**

**2. in the State of Colorado, at or about the date and place charged,**



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**3. was a warehouse, or an officer, agent, or servant of a warehouse, and**

**4. issued or aided in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them was outstanding and uncanceled,**

**5. without placing upon the face thereof the word “duplicate.”**

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of issuance of a duplicate receipt not marked.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of issuance of a duplicate receipt not marked.**

**COMMENT**

1. See § 18-5-508, C.R.S. 2019.

2. See Instruction 161.5 (defining “goods”); Instruction F:391.5 (defining “warehouse”); see also § 4-7-501, C.R.S. 2019 (“Form of negotiation and requirements for due negotiation”).

3. Section 18-5-508 includes an exception for cases involving “a lost or destroyed receipt after proceedings as provided for in section 4-7-601, C.R.S.” However, the Committee has not drafted a model affirmative defense instruction.

5-5:10

**Warehouse's Goods Mingled**

**The elements of the crime of warehouse's goods mingled are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a warehouse, or an officer, agent, or servant of a warehouse, and**
- 4. knowing that goods deposited with or held by the warehouse were goods of which the warehouse was the owner, either solely or jointly or in common with others,**
- 5. issued or aided in issuing a negotiable receipt for the goods that did not state such ownership.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of warehouse's goods mingled.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of warehouse's goods mingled.**

**COMMENT**

1. See § 18-5-509, C.R.S. 2019.

2. See Instruction 161.5 (defining "goods"); Instruction F:391.5

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(defining “warehouse”); *see also* § 4-7-501, C.R.S. 2019 (“Form of negotiation and requirements for due negotiation”).

**5-5:11**

### **Delivery of Goods Without Receipt**

**The elements of the crime of delivery of goods without receipt are:**

- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. was a warehouse, or an officer, agent, or servant of a warehouse, and**
  - 4. delivered goods out of the possession of such warehouse,**
  - 5. knowing that a negotiable receipt, the negotiation of which would transfer the right of the possession of those goods, was outstanding and uncanceled,**
  - 6. without obtaining the possession of that receipt at or before the time of the delivery.**
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of delivery of goods without receipt.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of delivery of goods without receipt.**



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### COMMENT

1. See § 18-5-510, C.R.S. 2019.

2. See Instruction 161.5 (defining “goods”); Instruction F:391.5 (defining “warehouse”); *see also* § 4-7-501, C.R.S. 2019 (“Form of negotiation and requirements for due negotiation”).

3. Section 18-5-510 includes an exception for “cases provided for in section 4-7-601, C.R.S.” However, the Committee has not drafted a model affirmative defense instruction.

### 5-5:12

#### Negotiating a Receipt With Intent to Deceive

The elements of the crime of negotiating a receipt with intent to deceive:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. deposited goods to which he [she] did not have title, or upon which there was a security interest in personal property, and
4. took for such goods a negotiable receipt, and
5. afterwards negotiated that receipt for value,
6. with intent to deceive, and
7. without disclosing his [her] want of title or the existence of such security interest.
- [8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-

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**dant guilty of negotiating a receipt with intent to deceive.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of negotiating a receipt with intent to deceive.**

### COMMENT

1. See § 18-5-511, C.R.S. 2019.

2. See Instruction 161.5 (defining “goods”); Instruction F:185 (defining “with intent”); § 4-1-201(b)(35), C.R.S. 2019 (defining “security interest”); see also § 4-7-501, C.R.S. 2019 (“Form of negotiation and requirements for due negotiation”).

### 5-5:13

#### Issuance of a Bad Check

**The elements of the crime of issuance of a bad check are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. other than by committing the offense of fraud by check (insufficient funds),
4. issued or passed a check or similar sight order for the payment of money,
5. knowing that [he] [she] [the issuer] did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of issuance of a bad check.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of issuance of a bad check.

### COMMENT

1. *See* § 18-5-512(3), C.R.S. 2019.

2. *See* Instruction F:183.6 (defining “insufficient funds”).

3. Do not use the definition of “issuer” in Instruction F:189. That definition is derived from section 18-5-701(4), C.R.S. 2019, which applies to financial transaction device crimes. *See* § 18-5-701(3), C.R.S. 2019 (excluding a “check” from the definition of a “financial transaction device”); *see also* Instruction F:153 (defining “financial transaction device”).

4. If the defendant is not charged with fraud by check, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. *See* Instruction 5-2:01 (fraud by check—insufficient funds). Place the elemental instruction for that offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for fraud by check.

### 5-5:14.SP

#### Issuance of a Bad Check—Special Instruction (Knowledge of Insufficient Funds)

Except in the case of a postdated check or order, the following evidence gives rise to a permissible inference that the issuer had knowledge of his [her] insufficient funds: he [she] had no account with the bank or other drawee at the time he [she] issued the check or order; or he [she] had insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentation within thirty days after issue.



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A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

### COMMENT

1. Section 18-5-512(4), C.R.S. 2019.

2. Although the statute speaks in terms of a presumption, the concept should be explained to the jury as a permissible inference. *See* *People v. Felgar*, 58 P.3d 1122, 1125 (Colo. App. 2002) (construing a parallel provision, in section 18-5-205(8), as creating a permissible inference, and holding that the trial court committed reversible error by instructing the jury, in the language of the statute, that if certain circumstances existed it could presume that the defendant had knowledge of insufficient funds in his account); *see generally* *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissive inference in a criminal case does not violate due process).

## CHAPTER 5-7

### FINANCIAL TRANSACTION DEVICE CRIMES

#### 5-7:01

#### Unauthorized Use of a Financial Transaction Device

The elements of the crime of unauthorized use of a financial transaction device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,

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4. to defraud,

5. used a financial transaction device for the purpose of obtaining cash, credit, property, or services, or for making financial payment,

6. with notice that the financial transaction device had expired, had been revoked, or had been cancelled, or with notice that his [her] use of the financial transaction device was, for any reason, unauthorized by the issuer thereof or the account holder.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized use of a financial transaction device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized use of a financial transaction device.

### COMMENT

1. See § 18-5-702(1), C.R.S. 2019.

2. See Instruction F:153 (defining “financial transaction device”); Instruction F:242 (defining “notice”); Instruction F:185 (defining “with intent”); Instruction F:189 (defining “issuer”).

3. The term “defraud” is not defined by statute.

4. See *People v. Novitskiy*, 81 P.3d 1070, 1073 (Colo. App. 2003) (“we construe § 18-5-702 to require that a defendant in fact obtain possession or use of cash, credit, property, or services through the unauthorized use of a financial transaction device”); *People v. Pipkin*, 762 P.2d 736, 737 (Colo. App. 1988) (“the statutory requirement that notice be given in person or in writing applies to the account holder or to one in



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possession of the card with permission of the account holder and not to one using an allegedly lost or stolen card”); + *cf.* *People v. Patton*, 2016 COA 187, ¶ 13, 425 P.3d 1152, 1156 (“We conclude that [section 18-5-702(2)] does not require notice only in person or in writing, because the word ‘includes’ is a word that is meant to extend rather than limit.”).

5. + In 2019, the Committee added the citation to *Patton* in Comment 4.

### 5-7:02.INT

#### Unauthorized Use of a Financial Transaction Device— Interrogatory (Value)

If you find the defendant not guilty of unauthorized use of a financial transaction device, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of unauthorized use of a financial transaction device, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question[s] on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]

1. Was the value of the cash, credit, property, or services obtained or of the financial payments made by unauthorized use of a single financial transaction device within a six-month period from the date of the first unauthorized use [insert value(s) from section 18-5-702(3)]? (Answer “Yes” or “No”)

[2. Was the value of the cash, credit, property, or services obtained or of the financial payments made by unauthorized use of a single financial transaction device within a six-month period from the date of the first unauthorized use [insert value(s) from section 18-5-702(3)]? (Answer “Yes” or “No”)]



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The prosecution has the burden to prove the value of the thing involved beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. *See* § 18-5-702(3), (4), C.R.S. 2019.

2. *See, e.g.*, Instruction E:28 (special verdict form).

3. In cases where value is a disputed issue, one or both of the parties may assert that there is an evidentiary basis for submitting more than one valuation question as part of the interrogatory. Accordingly, the above interrogatory includes a bracketed example of a lesser valuation question.

4. Where more than one valuation question is included as part of the interrogatory, use a special verdict form with a corresponding format that repeats the admonition that the jury cannot answer “Yes” to more than one valuation question. *See* Instruction 4-4:06.INT, Comment 4.

### 5-7:03.SP

#### Unauthorized Use of a Financial Transaction Device— Special Instruction (Notice)

The sending of a notice in writing by registered or certified mail, return receipt requested, duly stamped and addressed to such account holder at his [her] last address known to the issuer, evidenced by a signed returned receipt signed by the account holder, gives rise to a permissible inference that the notice was received.

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A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

### COMMENT

1. See Section 18-5-702(2), C.R.S. 2019.

2. This concept should be explained as a permissible inference. See *People in re R.M.D.*, 829 P.2d 852 (Colo. 1992) (construing “prima facie” proof provision as establishing a permissible inference); see generally *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

5-7:04

### Criminal Possession or Sale of a Blank Financial Transaction Device

The elements of criminal possession or sale of a blank financial transaction device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. without the authorization of the issuer or manufacturer,
4. had in his [her] possession or under his [her] control or received from another person, with intent to use, deliver, circulate, or sell it or with intent to cause the use, delivery, circulation, or sale of it, or sold,

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5. any financial transaction device which had at least one or more characteristics of a financial transaction device but did not contain all of the characteristics of a completed financial transaction device because it had not been embossed or magnetically encoded with the name of the account holder, personal identification code, expiration date, or other proprietary institutional information.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession or sale of a blank financial transaction device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession or sale of a blank financial transaction device.

### COMMENT

1. See § 18-5-705(1), (6), C.R.S. 2019.

2. See Instruction F:06 (defining “account holder”); Instruction F:34 (defining “blank financial transaction device,” as incorporated into the fifth element above); Instruction F:153 (defining “financial transaction device”); Instruction F:185 (defining “with intent”); Instruction F:189 (defining “issuer”); Instruction F:270 (defining “personal identification code”); Instruction F:281 (defining “possession”).

### 5-7:05.INT

#### **Criminal Possession or Sale of a Blank Financial Transaction Device—Interrogatory (Possession of Multiple Devices)**

**If you find the defendant not guilty of criminal**



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possession or sale of a blank financial transaction device, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of criminal possession or sale of a blank financial transaction device, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant possess multiple devices?  
(Answer “Yes” or “No”)**

**The defendant possessed multiple devices only if:**

1. the defendant possessed two or more blank financial transaction devices.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-5-705(3), C.R.S. 2019.

2. See Instruction F:34 (defining “blank financial transaction device”); see, e.g., Instruction E:28 (special verdict form).

## **FINANCIAL TRANSACTION DEVICE CRIMES**

### **5-7:06.INT**

#### **Criminal Possession or Sale of a Blank Financial Transaction Device—Interrogatory (Delivery, Circulation, or Sale of a Single Device)**

If you find the defendant not guilty of criminal possession or sale of a blank financial transaction device, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of criminal possession or sale of a blank financial transaction device, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant deliver, circulate, or sell a device? (Answer “Yes” or “No”)**

The defendant delivered, circulated, or sold a device only if:

1. the defendant delivered, circulated, or sold one blank financial transaction device.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

#### **COMMENT**

1. See § 18-5-705(4), C.R.S. 2019.



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2. See Instruction F:34 (defining “blank financial transaction device”); see, e.g., Instruction E:28 (special verdict form).

**5-7:07.INT**

**Criminal Possession or Sale of a Blank Financial Transaction Device—Interrogatory (Delivery, Circulation, or Sale of Multiple Devices)**

If you find the defendant not guilty of criminal sale of a blank financial transaction device, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of criminal sale of a blank financial transaction device, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant deliver, circulate, or sell multiple devices? (Answer “Yes” or “No”)**

**The defendant delivered, circulated, or sold multiple devices only if:**

1. the defendant delivered, circulated, or sold two or more blank financial transaction devices.

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.



## FINANCIAL TRANSACTION DEVICE CRIMES

### COMMENT

1. See § 18-5-705(5), C.R.S. 2019.
2. See Instruction F:34 (defining “blank financial transaction device”); see, e.g., Instruction E:28 (special verdict form).

**5-7:08**

### **Criminal Possession of Forgery Devices**

**The elements of criminal possession of forgery devices are:**

1. **That the defendant,**
2. **in the State of Colorado, at or about the date and place charged,**
3. **possessed any tools, photographic equipment, printing equipment, or any other device adapted, designed, or commonly used for committing or facilitating the commission of a crime involving the unauthorized manufacture, printing, embossing, or magnetic encoding of a financial transaction device or the altering or addition of any uniform product codes, optical characters, or holographic images to a financial transaction device, and**
4. **intended to use the thing possessed, or knew that some person intended to use the thing possessed, in the commission of such a crime.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of forgery devices.**

**After considering all the evidence, if you decide**

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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of forgery devices.**

### **COMMENT**

1. *See* § 18-5-706, C.R.S. 2019.

2. *See* Instruction F:153 (defining “financial transaction device”); Instruction F:185 (defining “intentionally” and “with intent”); Instruction F:281 (defining “possession”).

3. If the defendant is not separately charged with unlawful manufacture of a financial transaction device in violation of section 18-5-707, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

### **5-7:09**

#### **Unlawful Manufacture of a Financial Transaction Device (Made or Manufactured)**

**The elements of the crime of unlawful manufacture of a financial transaction device (made or manufactured) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to defraud,**
- 5. falsely made or manufactured a financial transaction device,**
- 6. by printing, embossing, or magnetically encoding.**

## FINANCIAL TRANSACTION DEVICE CRIMES

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful manufacture of a financial transaction device (made or manufactured).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful manufacture of a financial transaction device (made or manufactured).

### COMMENT

1. See § 18-5-707(1)(a), C.R.S. 2019.
2. See Instruction F:145 (defining “falsely make”); Instruction F:185 (defining “with intent”).
3. The term “defraud” is not defined by statute.

### 5-7:10

#### Unlawful Manufacture of a Financial Transaction Device (Alteration or Addition)

The elements of the crime of unlawful manufacture of a financial transaction device (alteration or addition) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to defraud,
5. falsely altered or added uniform product



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codes, optical characters, or holographic images to a device which was or purported to be, or which was calculated to become or to represent if completed, a financial transaction device.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful manufacture of a financial transaction device (alteration or addition).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful manufacture of a financial transaction device (alteration or addition).

### COMMENT

1. See § 18-5-707(1)(b), C.R.S. 2019.
2. See Instruction F:140 (defining “falsely alter”); Instruction F:185 (defining “with intent”).
3. The term “defraud” is not defined by statute.

### 5-7:11

#### Unlawful Manufacture of a Financial Transaction Device (Completion)

The elements of the crime of unlawful manufacture of a financial transaction device (completion) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

## **EQUITY SKIMMING AND RELATED OFFENSES**

- 3. with intent,**
- 4. to defraud,**
- 5. falsely completed a financial transaction device by adding to an incomplete device to make it a complete one.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful manufacture of a financial transaction device (completion).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful manufacture of a financial transaction device (completion).**

### **COMMENT**

1. *See* § 18-5-707(1)(c), C.R.S. 2019.
2. *See* Instruction F:142 (defining “falsely complete”); Instruction F:185 (defining “with intent”).
3. The term “defraud” is not defined by statute.

## **CHAPTER 5-8**

## **EQUITY SKIMMING AND RELATED OFFENSES**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2015.

5-8:01

**Equity Skimming of Real Property**

**The elements of the crime of equity skimming of real property are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. acquired an interest in real property that was encumbered by a loan secured by a mortgage or deed of trust, and**
- 5. the loan was [in arrears at the time the defendant acquired the interest] [placed in default within eighteen months after the defendant acquired the interest], and**
- 6. [failed to apply all rent derived from the person's interest in the real property first toward the satisfaction of all outstanding payments due on the loan and second toward any fees due to any association of real property owners that charges such fees for the upkeep of the housing facility, or common area including buildings and grounds thereof, of which the real property was a part before appropriating the remainder of such rent or any part thereof for any other purpose except for the purpose of repairs necessary to prevent waste of the real property]**

**[after a foreclosure in which title had vested, collected rent on behalf of any person other than the owner of the real property].**



## EQUITY SKIMMING AND RELATED OFFENSES

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of equity skimming of real property.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of equity skimming of real property.**

### COMMENT

1. See § 18-5-802(1), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:307.5 (defining “real property”); Instruction F:311.5 (defining “rent”); Instruction F:329.5 (defining “security interest”).

3. See Instruction H:47.5 (affirmative defense of “full payment”). *But see* § 18-5-802(4)(a), C.R.S. 2019 (specifying that this affirmative defense is unavailable where the defendant is charged with violating section 18-5-802(1)(b)(II), C.R.S. 2019 (collecting rent on behalf of any person other than the owner of the real property after a foreclosure in which title has vested)).

4. Sections 18-5-802(5), (6), C.R.S. 2019, state that section 18-5-802(1) is inapplicable to a bona fide lender who accepts a deed in lieu of foreclosure or who forecloses on property, or to a bona fide purchaser who complies with prescribed notice and disclosure provision. However, the Committee has not drafted model affirmative defense instructions.

5. If necessary, draft a special instruction to explain the vesting of title upon expiration of the redemption period under section 38-38-501, C.R.S. 2019.

### 5-8:02

## Equity Skimming of a Vehicle (Control)

**The elements of the crime of equity skimming of a vehicle (control) are:**

**1. That the defendant,**

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- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowing that a vehicle was subject to a security interest, lien, or lease,**
- 4. accepted possession of or exercised any control over the vehicle,**
- 5. in exchange for consideration in the form of a verbal assurance or otherwise, and**
- 6. obtained or exercised control over the vehicle of another, and**
- 7. then sold or leased the vehicle to a third party,**
- 8. without first obtaining written authorization from the secured creditor, lessor, or lienholder for the transaction of the sale or lease to the third party.**
- [9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of equity skimming of a vehicle (control).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of equity skimming of a vehicle (control).**

**COMMENT**

1. See § 18-5-803(1)(a), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:196.5 (defining “lease”) Instruction F:329.5 (defining “security interest”); Instruction F:385.5 (defining “vehicle”).

## **EQUITY SKIMMING AND RELATED OFFENSES**

3. Section 18-5-803(1)(a) includes excepting language where full payment is made within thirty days. However, the Committee takes no position concerning whether this provision establishes an element of the offense or an affirmative defense.

**5-8:03**

### **Equity Skimming of a Vehicle (Arranging)**

**The elements of the crime of equity skimming of a vehicle (arranging) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowing that a vehicle was subject to a security interest, lien, or lease,**
- 4. accepted possession of or exercised any control over the vehicle,**
- 5. in exchange for consideration in the form of a verbal assurance or otherwise, and**
- 6. arranged the sale or lease of the vehicle of another to a third party,**
- 7. without first obtaining written authorization from the secured creditor, lessor, or lienholder for the transaction of the sale or lease to the third party, and**
- 8. exercised control over any part of the funds received.**
- [9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements be-**



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yond a reasonable doubt, you should find the defendant guilty of equity skimming of a vehicle (arranging).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of equity skimming of a vehicle (arranging).

### COMMENT

1. See § 18-5-803(1)(b), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:196.5 (defining “lease”); Instruction F:329.5 (defining “security interest”); Instruction F:385.5 (defining “vehicle”).

3. Section 18-5-803(1)(b) includes excepting language where full payment is made within thirty days. However, the Committee takes no position concerning whether this provision establishes an element of the offense or an affirmative defense.

### 5-8:04

#### Equity Skimming of a Vehicle (Monthly Payments)

The elements of the crime of equity skimming of a vehicle (monthly payments) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing that a vehicle was subject to a security interest, lien, or lease,
4. accepted possession of or exercised any control over the vehicle,
5. in exchange for consideration in the form of a verbal assurance or otherwise, and
6. knowingly,

## **EQUITY SKIMMING AND RELATED OFFENSES**

**7. failed to ascertain on a monthly basis whether payments were due to the secured creditor, lienholder, or lessor, and**

**8. failed to apply all funds he [she] received for any lease or sale of the vehicle toward the satisfaction of any outstanding payment due to the secured creditor, lienholder, or lessor in a timely manner.**

**[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of equity skimming of a vehicle (monthly payments).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of equity skimming of a vehicle (monthly payments).**

### **COMMENT**

1. See § 18-5-803(1)(c), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:196.5 (defining “lease”) Instruction F:329.5 (defining “security interest”); Instruction F:385.5 (defining “vehicle”).

**CHAPTER 5-9**

**IDENTIFY THEFT AND RELATED  
OFFENSES**

**5-9:01**

**Identity Theft (Use)**

**The elements of the crime of identity theft (use) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. used the personal identifying information, financial identifying information, or financial device of another,**
- 5. without permission or lawful authority, and**
- 6. with the intent,**
- 7. to obtain cash, credit, property, services, or any other thing of value or to make a financial payment.**
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of identity theft (use).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**



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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of identity theft (use).**

### COMMENT

1. *See* § 18-5-902(1)(a), C.R.S. 2019.

2. *See* Instruction F:150 (defining “financial device”); Instruction F:151 (defining “financial identifying information”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:249 (defining “of another”); Instruction F:272 (defining “personal identifying information”).

3. *See* *People v. Beck*, 187 P.3d 1125, 1128–29 (Colo. App. 2008) (“Section 18-5-902(1) uses the phrase ‘thing of value,’ but does not explicitly incorporate the definition found in section 18-1-901(3)(r) . . . The list of things in the identity theft statute includes items such as cash and things that can be lawfully exchanged for cash, or financial payments. They all have financial or economic value and can be lawfully obtained, or made in the case of a financial payment, through the use of a financial device or personal or financial identifying information. None is a public right, duty, or entitlement that cannot be lawfully obtained in exchange for payment. Accordingly, we reject the People’s contention that, for purposes of the identity theft statute, the phrase ‘to obtain . . . any other thing of value’ includes the nonpecuniary benefits of misleading and influencing the actions of a police officer, such as obtaining the use of another person’s driving record.”).

4. *See* *People v. Perez*, 2016 CO 12, ¶¶ 14, 22, 367 P.3d 695, 699, 700 (holding that the term “knowingly” in the identity theft statute “applies to the use of the identifying information of another,” meaning the prosecution “must prove that an offender knowingly used personal identifying information and knew that the information belonged to another person”).

5. In 2017, the Committee added Comment 4.

### 5-9:02

#### Identity Theft (Possession)

**The elements of the crime of identity theft (possession) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

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3. knowingly,
4. possessed the personal identifying information, financial identifying information, or financial device of another,
5. without permission or lawful authority, and
6. with the intent,
7. to use or to aid or permit some other person to use such information or device to obtain cash, credit, property, services, or any other thing of value or to make a financial payment.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of identity theft (possession).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of identity theft (possession).

COMMENT

1. See § 18-5-902(1)(b), C.R.S. 2019.

2. See Instruction F:150 (defining “financial device”); Instruction F:151 (defining “financial identifying information”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:249 (defining “of another”); Instruction F:272 (defining “personal identifying information”); Instruction F:281 (defining “possession”).

3. See *People v. Beck*, 187 P.3d 1125, 1128–29 (Colo. App. 2008) (“Section 18-5-902(1) uses the phrase ‘thing of value,’ but does not explicitly incorporate the definition found in section 18-1-901(3)(r) . . . The list of things in the identity theft statute includes items such as cash and things that can be lawfully exchanged for cash, or financial

## **IDENTIFY THEFT AND RELATED OFFENSES**

payments. They all have financial or economic value and can be lawfully obtained, or made in the case of a financial payment, through the use of a financial device or personal or financial identifying information. None is a public right, duty, or entitlement that cannot be lawfully obtained in exchange for payment. Accordingly, we reject the People's contention that, for purposes of the identity theft statute, the phrase 'to obtain . . . any other thing of value' includes the nonpecuniary benefits of misleading and influencing the actions of a police officer, such as obtaining the use of another person's driving record.").

**5-9:03**

### **Identity Theft (Falsely Made, Completed, Altered, or Uttered)**

**The elements of the crime of identity theft (falsely made, completed, altered, or uttered) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with the intent,**
- 4. to defraud,**
- 5. falsely made, completed, altered, or uttered a written instrument or financial device containing any personal identifying information or financial identifying information of another.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of identity theft (falsely made, completed, altered, or uttered).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**



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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of identity theft (falsely made, completed, altered, or uttered).**

**COMMENT**

1. *See* § 18-5-902(1)(c), C.R.S. 2019.

2. *See* Instruction F:140.5 (defining “falsely alter”); Instruction F:143 (defining “falsely complete”); Instruction F:146 (defining “falsely make”); Instruction F:150 (defining “financial device”); Instruction F:151 (defining “financial identifying information”); Instruction F:185 (defining “with intent”); Instruction F:249 (defining “of another”); Instruction F:272 (defining “personal identifying information”); Instruction F:395 (defining “written instrument”); *see also* Instruction F:385 (defining “utter” based on section 18-5-101(8), C.R.S. 2019, which defines the term for purposes of forgery and impersonation offenses in sections 18-5-101 to 18-5-110).

3. The term “defraud” is not defined by statute.

**5-9:04**

**Identity Theft (Financial Device or Extension of Credit)**

**The elements of the crime of identity theft ([financial device] [extension of credit]) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. possessed the personal identifying information or financial identifying information of another,**
- 5. without permission or lawful authority,**
- 6. to use in applying for or completing an application for a financial device or other extension of credit.**
- [7. and that the defendant’s conduct was not**

## IDENTIFY THEFT AND RELATED OFFENSES

**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of identity theft ([financial device] [extension of credit]).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of identity theft ([financial device] [extension of credit]).**

### COMMENT

1. *See* § 18-5-902(1)(d), C.R.S. 2019.

2. *See* Instruction F:136 (defining “extension of credit”); Instruction F:150 (defining “financial device”); Instruction F:151 (defining “financial identifying information”); Instruction F:195 (defining “knowingly”); Instruction F:249 (defining “of another”); Instruction F:272 (defining “personal identifying information”); Instruction F:281 (defining “possession”).

**5-9:05**

### **Identity Theft (Government-Issued Document)**

**The elements of the crime of identity theft (government-issued document) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. used or possessed the personal identifying information of another,**
- 5. without permission or lawful authority,**

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**6. with the intent to obtain a government-issued document.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of identity theft (government-issued document).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of identity theft (government-issued document).**

### COMMENT

1. See § 18-5-902(1)(e), C.R.S. 2019.

2. See Instruction F:164 (defining “government”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:249 (defining “of another”); Instruction F:272 (defining “personal identifying information”); Instruction F:281 (defining “possession”).

**5-9:06**

### **Criminal Possession of a Financial Device**

**The elements of criminal possession of a financial device are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. had in his [her] possession or under his [her] control,**
- 4. any financial device,**



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5. that he [she] knew, or reasonably should have known, to be lost, stolen, or delivered under mistake as to the identity or address of the account holder.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of a financial device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of a financial device.

### COMMENT

1. See § 18-5-903(1), C.R.S. 2019.

2. See Instruction F:07 (defining “account holder”); Instruction F:150 (defining “financial device”); Instruction F:281 (defining “possession”).

3. See *People v. Stevenson*, 881 P.2d 383 (Colo. App. 1994) (holding, at a time when the offense was codified at section 18-5-703(1)), that:

A person who finds a lost or stolen credit device commits no crime in temporarily taking it into possession for delivery to its lawful owner or other appropriate authority. Possession becomes criminal only if the actor is aware that the device is lost, stolen, or misdelivered and voluntarily maintains possession “for a sufficient period to have been able to terminate it.” See § 18-1-501(9).

*Stevenson*, 881 P.2d at 384.

### 5-9:07.INT

## Criminal Possession of a Financial Device—Interrogatory (Multiple Devices)

If you find the defendant not guilty of criminal

**COLORADO JURY INSTRUCTIONS—CRIMINAL**

possession of a financial device, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of criminal possession of a financial device, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant possess multiple devices?  
(Answer “Yes” or “No”)**

**The defendant possessed multiple devices only if:**

- 1. the defendant possessed two or more financial devices.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

- 1. See § 18-5-903(2)(b), C.R.S. 2019.*
- 2. See, e.g., Instruction E:28 (special verdict form).*

**5-9:08.INT**

**Criminal Possession of a Financial Device—Interrogatory  
(Different Account Holders)**

**If you find the defendant not guilty of criminal**

## IDENTIFY THEFT AND RELATED OFFENSES

possession of a financial device, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of criminal possession of a financial device, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the defendant possess devices of different account holders? (Answer “Yes” or “No”)

The defendant possessed devices of different account holders only if:

1. the defendant possessed four or more financial devices,
2. of which at least two were issued to different account holders.

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

## COMMENT

1. See § 18-5-903(2)(c), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).



5-9:09

**Criminal Possession of an Identification Document**

The elements of criminal possession of an identification document are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
- 4., had in his [her] possession or under his [her] control,
5. another person's actual driver's license, actual government-issued identification card, actual social security card, or actual passport,
6. knowing that he [she] did so without permission or lawful authority.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal possession of an identification document.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal possession of an identification document.

**COMMENT**

1. See § 18-5-903.5(1), C.R.S. 2019.

## **IDENTIFY THEFT AND RELATED OFFENSES**

2. See Instruction F:164 (defining “government”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

### **5-9:10.INT**

#### **Criminal Possession of an Identification Document— Interrogatory (Different Persons)**

If you find the defendant not guilty of criminal possession of an identification document, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of criminal possession of an identification document, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant possess documents of different persons? (Answer “Yes” or “No”)**

**The defendant possessed documents of different persons only if:**

- 1. the defendant possessed two or more identification documents,**
- 2. of which at least two were issued to different persons.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have**

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**the foreperson sign the designated line of the verdict form.**

### **COMMENT**

1. *See* § 18-5-903.5(2)(b), C.R.S. 2019.
2. *See, e.g.*, Instruction E:28 (special verdict form).

### **5-9:11**

#### **Gathering Identity Information by Deception**

**The elements of the crime of gathering identity information by deception are:**

1. **That the defendant,**
2. **in the State of Colorado, at or about the date and place charged,**
3. **knowingly,**
4. **made or conveyed a materially false statement,**
5. **without permission or lawful authority,**
6. **with the intent to obtain, record, or access the personal identifying information or financial identifying information of another.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gathering identity information by deception.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**



## IDENTIFY THEFT AND RELATED OFFENSES

**of the elements beyond a reasonable doubt, you should find the defendant not guilty of gathering identity information by deception.**

### COMMENT

1. *See* § 18-5-904, C.R.S. 2019.

2. *See* Instruction F:151 (defining “financial identifying information”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:249 (defining “of another”); Instruction F:272 (defining “personal identifying information”); *see also* Instruction F:143 (defining “materially false statement” as part of the definition of “falsely complete” (identity theft and related offenses)).

### 5-9:12

#### Possession of Identity Theft Tools

**The elements of the crime of possession of identity theft tools are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. possessed any tools, equipment, computer, computer network, scanner, printer, or other article adapted, designed, or commonly used for committing or facilitating the commission of the crime of identity theft, and**
- 4. intended to use the thing possessed, or knew that a person intended to use the thing possessed, in the commission of the crime of identity theft.**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of identity theft tools.**

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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of identity theft tools.

### COMMENT

1. See § 18-5-905, C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally” and “with intent”); Instruction F:281 (defining “possession”); Instructions 5-9:01 to 5-9:05 (identity theft); *see also* Instruction F:61 (defining “computer,” for purposes of the cybercrime statute); Instruction F:62 (defining “computer network,” for purposes of the cybercrime statute).

3. If the defendant is not separately charged with identity theft, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

4. In 2018, the Committee changed the term “computer crime” to “cybercrime” in Comment 2 pursuant to a legislative amendment. *See* Ch. 379, sec. 2, § 18-5.5-102(1), 2018 Colo. Sess. Laws 2290, 2291.

## CHAPTER 5.5

### CYBERCRIME

#### CHAPTER COMMENTS

1. In 2018, per a legislative amendment, the Committee changed the title of this chapter from “Computer Crime” to “Cybercrime.” *See* Ch. 379, sec. 2, § 18-5.5-102(1), 2018 Colo. Sess. Laws 2290, 2291.

#### 5.5:01

#### Cybercrime (Authorization)

**The elements of cybercrime (authorization) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

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3. knowingly,

4. accessed a computer, computer network, or computer system or any part thereof without authorization; exceeded authorized access to a computer, computer network, or computer system or any part thereof; or used a computer, computer network, or computer system or any part thereof without authorization or in excess of authorized access.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cybercrime (authorization).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cybercrime (authorization).

### COMMENT

1. See § 18-5.5-102(1)(a), C.R.S. 2019.

2. See Instruction F:28 (defining “authorization”); Instruction F:61 (defining “computer”); Instruction F:62 (defining “computer network”); Instruction F:65 (defining “computer system”); Instruction F:130 (defining “exceed authorized access”); Instruction F:383 (defining “use”).

3. See also *People v. Rice*, 198 P.3d 1241, 1243–44 (Colo. App. 2008) (defendant “accessed” a computer or computer system, within the meaning of section 18-5.5-102(1)(c)–(d), by submitting false information through an automated phone system to make fraudulent claims for unemployment benefits; the evidence established that the phone system was a computerized system which used an interactive voice response technology).

4. In 2018, the Committee changed the term “computer crime” to “cybercrime” throughout this instruction pursuant to a legislative



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amendment. *See* Ch. 379, sec. 2, § 18-5.5-102(1), 2018 Colo. Sess. Laws 2290, 2291.

### 5.5:02

#### Cybercrime (Defraud)

**The elements of cybercrime (defraud) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. accessed any computer network, computer system, or any part thereof,**
- 5. for the purpose of devising or executing any scheme or artifice to defraud.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cybercrime (defraud).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cybercrime (defraud).**

#### COMMENT

1. *See* § 18-5.5-102(1)(b), C.R.S. 2019.

2. *See* Instruction F:61 (defining “computer”); Instruction F:62 (defining “computer network”); Instruction F:65 (defining “computer system”).

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3. *See also* People v. Rice, 198 P.3d 1241, 1243–44 (Colo. App. 2008) (defendant “accessed” a computer or computer system, within the meaning of section 18-5.5-102(1)(c)–(d), by submitting false information through an automated phone system to make fraudulent claims for unemployment benefits; the evidence established that the phone system was a computerized system which used an interactive voice response technology).

4. The term “defraud” is not defined by statute.

5. In 2018, the Committee changed the term “computer crime” to “cybercrime” throughout this instruction pursuant to a legislative amendment. *See* Ch. 379, sec. 2, § 18-5.5-102(1), 2018 Colo. Sess. Laws 2290, 2291.

### 5.5:03

#### Cybercrime (Pretenses)

**The elements of cybercrime (pretenses) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. accessed any computer, computer network, or computer system, or any part thereof,**
- 5. to obtain, by means of false or fraudulent pretenses, representations, or promises,**
- 6. money; property; services; passwords or similar information through which a computer, computer network, or computer system or any part thereof may be accessed; or other thing of value.**
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements be-**

## COLORADO JURY INSTRUCTIONS—CRIMINAL

**yond a reasonable doubt, you should find the defendant guilty of cybercrime (pretenses).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cybercrime (pretenses).**

### COMMENT

1. *See* § 18-5.5-102(1)(c), C.R.S. 2019.

2. *See* Instruction F:61 (defining “computer”); Instruction F:62 (defining “computer network”); Instruction F:65 (defining “computer system”); Instruction F:335 (defining “services”); Instruction F:371 (defining “thing of value”).

3. *See* *People v. Rice*, 198 P.3d 1241, 1243–44 (Colo. App. 2008) (defendant “accessed” a computer or computer system, within the meaning of section 18-5.5-102(1)(c)–(d), by submitting false information through an automated phone system to make fraudulent claims for unemployment benefits; the evidence established that the phone system was a computerized system which used an interactive voice response technology).

4. In 2018, the Committee changed the term “computer crime” to “cybercrime” throughout this instruction pursuant to a legislative amendment. *See* Ch. 379, sec. 2, § 18-5.5-102(1), 2018 Colo. Sess. Laws 2290, 2291.

## 5.5:04

### Cybercrime (Theft)

**The elements of cybercrime (theft) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. accessed any computer, computer network, or computer system, or any part thereof, to commit the crime of theft.**



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**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cybercrime (theft).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cybercrime (theft).**

## COMMENT

1. *See* § 18-5.5-102(1)(d), C.R.S. 2019.

2. *See* Instruction F:61 (defining “computer”); Instruction F:62 (defining “computer network”); Instruction F:65 (defining “computer system”); Chapter 4-4 (theft).

3. *See* *People v. Rice*, 198 P.3d 1241, 1243–44 (Colo. App. 2008) (defendant “accessed” a computer or computer system, within the meaning of section 18-5.5-102(1)(c)–(d), by submitting false information through an automated phone system to make fraudulent claims for unemployment benefits; the evidence established that the phone system was a computerized system which used an interactive voice response technology).

4. If the defendant is not separately charged with theft, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. *See* Instruction 4-4:01. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

5. In 2018, the Committee changed the term “computer crime” to “cybercrime” throughout this instruction pursuant to a legislative amendment. *See* Ch. 379, sec. 2, § 18-5.5-102(1), 2018 Colo. Sess. Laws 2290, 2291.

5.5:05

**Cybercrime (Alteration or Damage)**

The elements of cybercrime (alteration or damage) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. without authorization or in excess of authorized access,
5. altered, damaged, interrupted, or caused the interruption or impairment of the proper functioning of, or caused any damage to,
6. any computer, computer network, computer system, computer software, program, application, documentation, or data contained in such computer, computer network, or computer system or any part thereof.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cybercrime (alteration or damage).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cybercrime (alteration or damage).

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### COMMENT

1. *See* § 18-5.5-102(1)(e), C.R.S. 2019.

2. *See* Instruction F:28 (defining “authorization”); Instruction F:61 (defining “computer”); Instruction F:62 (defining “computer network”); Instruction F:63 (defining “computer program”); Instruction F:64 (defining “computer software”); Instruction F:65 (defining “computer system”); Instruction F:83 (defining “damage”); Instruction F:130 (defining “exceed authorized access”).

3. In 2018, the Committee changed the term “computer crime” to “cybercrime” throughout this instruction pursuant to a legislative amendment. *See* Ch. 379, sec. 2, § 18-5.5-102(1), 2018 Colo. Sess. Laws 2290, 2291.

### 5.5:06

#### Cybercrime (Transmission)

**The elements of cybercrime (transmission) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. caused the transmission of a computer program, software, information, code, data, or command by means of a computer, computer network, or computer system or any part thereof,**
- 5. with the intent to cause damage to or cause the interruption or impairment of the proper functioning of, any computer, computer network, computer system, or part thereof; or that actually caused damage to or the interruption or impairment of the proper functioning of, any computer, computer network, computer system, or part thereof.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**



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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cybercrime (transmission).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cybercrime (transmission).

### COMMENT

1. See § 18-5.5-102(1)(f), C.R.S. 2019.

2. See Instruction F:61 (defining “computer”); Instruction F:62 (defining “computer network”); Instruction F:63 (defining “computer program”); Instruction F:64 (defining “computer software”); Instruction F:65 (defining “computer system”); Instruction F:83 (defining “damage”).

3. In 2018, the Committee changed the term “computer crime” to “cybercrime” throughout this instruction pursuant to a legislative amendment. See Ch. 379, sec. 2, § 18-5.5-102(1), 2018 Colo. Sess. Laws 2290, 2291.

### 5.5:07

#### Cybercrime (On-Line Event Ticket Sale)

The elements of cybercrime (on-line event ticket sale) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. used or caused to be used,
5. a software application that ran automated tasks over the internet to access a computer, computer network, or computer system, or any part thereof,

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6. that circumvented or disabled any electronic queues, waiting periods, or other technological measure intended by the seller to limit the number of event tickets that may be purchased by any single person in an on-line event ticket sale.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cybercrime (on-line event ticket sale).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cybercrime (on-line event ticket sale).

### COMMENT

1. See § 18-5.5-102(1)(g), C.R.S. 2019.

2. See Instruction F:61 (defining “computer”); Instruction F:62 (defining “computer network”); Instruction F:64 (defining “computer software”); Instruction F:65 (defining “computer system”); Instruction F:253 (defining “on-line event ticket sale”).

3. In 2018, the Committee changed the term “computer crime” to “cybercrime” throughout this instruction pursuant to a legislative amendment. See Ch. 379, sec. 2, § 18-5.5-102(1), 2018 Colo. Sess. Laws 2290, 2291.

### 5.5:07.2

#### Cybercrime (Endanger Minor)

The elements of cybercrime (endanger minor) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

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- 3. knowingly,**
- 4. solicited or offered to arrange a situation in which a minor may engage in prostitution,**
- 5. by means of using a computer, computer network, computer system, or any part thereof.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cybercrime (endanger minor).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cybercrime (endanger minor).**

**COMMENT**

1. *See* § 18-5.5-102(1)(h), C.R.S. 2019.

2. *See* Instruction F:61 (defining “computer”); Instruction F:62 (defining “computer network”); Instruction F:65 (defining “computer system”); Instruction F:195 (defining “knowingly”); Instruction F:383 (defining “use”).

3. The Committee added this instruction in 2018 pursuant to new legislation. *See* Ch. 379, sec. 2, § 18-5.5-102(1)(h), 2018 Colo. Sess. Laws 2290, 2291.

**5.5:07.5**

**Cybercrime (Access Information)**

**The elements of cybercrime (access information) are:**

- 1. That the defendant,**



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2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. directly or indirectly used a scanning device,
5. to access, read, obtain, memorize, or store, temporarily or permanently,
6. information encoded on a payment card without the permission of the authorized user of the payment card,
7. with the intent,
8. to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cybercrime (access information).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cybercrime (access information).

## COMMENT

1. See § 18-5.5-102(1)(i), C.R.S. 2019.

2. See Instruction F:185 (defining "with intent"); Instruction F:195 (defining "knowingly"); Instruction F:262.5 (defining "payment card"); Instruction F:328.5 (defining "scanning device").

3. The term "defraud" is not defined by statute.

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4. The Committee added this instruction in 2018 pursuant to new legislation. *See* Ch. 379, sec. 2, § 18-5.5-102(1)(i), 2018 Colo. Sess. Laws 2290, 2291.

**5.5:07.8**

**Cybercrime (Encoding Machine)**

**The elements of cybercrime (encoding machine) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. directly or indirectly used an encoding machine to place information encoded on a payment card onto a different payment card,**
- 5. without the permission of the authorized user of the payment card from which the information being reencoded was obtained,**
- 6. with the intent,**
- 7. to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.**
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cybercrime (encoding machine).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**

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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of cybercrime (encoding machine).**

### COMMENT

1. *See* § 18-5.5-102(1)(j), C.R.S. 2019.

2. *See* Instruction F:122.5 (defining “encoding machine”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:262.5 (defining “payment card”).

3. The term “defraud” is not defined by statute.

4. The Committee added this instruction in 2018 pursuant to new legislation. *See* Ch. 379, sec. 2, § 18-5.5-102(1)(j), 2018 Colo. Sess. Laws 2290, 2291.

## 5.5:08.INT

### Cybercrime—Interrogatory (Value)

**If you find the defendant not guilty of cybercrime, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of cybercrime, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]**

**1. Was the loss, damage, value of services, or thing of value taken, or cost of restoration or repair caused by the cybercrime [insert a description of the amount(s) from section 18-5.5-102(3)]. (Answer “Yes” or “No”)**

**[2. Was the loss, damage, value of services, or thing of value taken, or cost of restoration or repair caused by the cybercrime [insert a descrip-**



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**tion of the amount(s) from section 18-5.5-102(3)].  
(Answer “Yes” or “No”)]**

**[3. Was the loss, damage, value of services, or thing of value taken, or cost of restoration or repair caused by the cybercrime [insert a description of the amount(s) from section 18-5.5-102(3)].  
(Answer “Yes” or “No”)]**

**The prosecution has the burden to prove the amount of the loss, damage, value of services, or thing of value taken, or cost of restoration or repair beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

1. *See* § 18-5.5-102(3)(a)(I) to (IX), C.R.S. 2019.

2. *See, e.g.*, Instruction E:28 (special verdict form).

3. In cases where value is a disputed issue, one or both of the parties may assert that there is an evidentiary basis for submitting more than one valuation question as part of the interrogatory. Accordingly, the above interrogatory includes bracketed examples for two lesser valuation questions.

4. Where more than one valuation question is included as part of the interrogatory, use a special verdict form with a corresponding format that repeats the admonition that the jury cannot answer “Yes” to more than one valuation question. *See* Instruction 4-4:06.INT, Comment 4.

5. In 2018, the Committee changed the term “computer crime” to “cybercrime” throughout this instruction pursuant to a legislative amendment. *See* Ch. 379, sec. 2, § 18-5.5-102(1), 2018 Colo. Sess. Laws 2290, 2291.

## **BIGAMY**

### **CHAPTER 6-2**

## **BIGAMY**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2016.

#### **6-2:01**

### **Bigamy (Marriage)**

The elements of the crime of bigamy (marriage) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a married person and, while still married,
4. married, entered into a civil union, or cohabitated in this state with another person.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bigamy (marriage).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bigamy (marriage).

### **COMMENT**

1. See § 18-6-201(1), C.R.S. 2019.

## COLORADO JURY INSTRUCTIONS—CRIMINAL

2. See Instruction F:56.8 (defining “cohabitation”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:47.7 (affirmative defense of “reasonable belief or extended absence”).

4. Where the existence of a common law marriage is at issue, the court should draft a supplemental instruction explaining the essential elements of a common law marriage. *See* *People v. Lucero*, 747 P.2d 660, 663 (Colo. 1987).

5. The statute does not define the term “civil union.”

### 6-2:02

#### Bigamy (Civil Union)

**The elements of the crime of bigamy (civil union) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a partner in a civil union and, while still legally in a civil union,
4. married, entered into another civil union, or cohabitated in this state with another person who was not a current partner in the civil union.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bigamy (civil union).**

**After considering all the evidence, if you decide**



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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bigamy (civil union).**

### COMMENT

1. *See* § 18-6-201(1.5), C.R.S. 2019.

2. *See* Instruction F:56.8 (defining “cohabitation”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. *See* Instruction H:47.7 (affirmative defense of “reasonable belief or extended absence”).

4. The statute does not define the term “civil union.”

**6-2:03**

### **Marrying a Bigamist**

**The elements of the crime of marrying a bigamist are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. was an unmarried person, and**
- 5. married or cohabitated with another in this state under circumstances known to him [her] which would have rendered the other person guilty of bigamy, as that offense is defined in these instructions.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of marrying a bigamist.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of marrying a bigamist.

### COMMENT

1. *See* § 18-6-202, C.R.S. 2019.

2. *See* Instruction F:56.8 (defining “cohabitation”); Instruction F:195 (defining “knowingly”).

3. Because this instruction requires the jury to determine whether another person would be guilty of bigamy, the court should provide the jury with a modified version of either Instruction 6-2:01 or Instruction 6-2:02 (defining bigamy in the context of marriages and civil unions, respectively). The court should change the first element to read “That a person” rather than “That the defendant,” omit the phrase “at or about the date and place charged” from the second element, and omit the two concluding paragraphs that explain the burden of proof.

## CHAPTER 6-3

### INCEST

#### 6-3:01

**Incest (An Ancestor or Descendant, Including a Natural Child Twenty-One Years of Age or Older, Brother, Sister, Uncle, Aunt, Nephew, or Niece)**

The elements of the crime of incest ([ancestor] [descendant] [natural child] [brother] [sister] [uncle] [aunt] [nephew] [niece]) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

## INCEST

3. knowingly,

4. married, inflicted sexual penetration or sexual intrusion on, or subjected to sexual contact,

5. an ancestor or descendant, including [a natural child twenty-one years of age or older] [a [brother] [sister] of the whole or half blood] [an [uncle] [aunt] [nephew] [niece] of the whole blood].

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of incest ([ancestor] [descendant] [natural child] [brother] [sister] [uncle] [aunt] [nephew] [niece]).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of incest ([ancestor] [descendant] [natural child] [brother] [sister] [uncle] [aunt] [nephew] [niece]).

## COMMENT

1. See § 18-6-301(1), C.R.S. 2019.

2. See Instruction F:92 (defining “descendant”); Instruction F:195 (defining “knowingly”); Instruction F:337 (defining “sexual contact”); Instruction F:340 (defining “sexual intrusion”); Instruction F:343 (defining “sexual penetration”).

3. The term “ancestor” is not defined in Part 3 of Article 6.

4. Where the existence of a common law marriage is at issue, draft a supplemental instruction that defines the essential elements of a common law marriage. See *People v. Lucero*, 747 P.2d 660, 663 (Colo. 1987).



6-3:02

**Incest (Adopted Child or Stepchild)**

The elements of the crime of incest ([adopted child] [stepchild]) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. inflicted sexual penetration or sexual intrusion on, or subjected to sexual contact,
5. a[n] [adopted child] [stepchild],
6. twenty-one years of age or older,
7. to whom the defendant was not legally married.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of incest ([adopted child] [stepchild]).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of incest ([adopted child] [stepchild]).

**COMMENT**

1. See § 18-6-301(1), C.R.S. 2019.
2. See Instruction F:92 (defining “descendant,” a term which need

## INCEST

not be separately defined if the excepting language concerning marriage to an adopted child or stepchild is incorporated into the instruction as shown above); Instruction F:195 (defining “knowingly”); Instruction F:337 (defining “sexual contact”); Instruction F:340 (defining “sexual intrusion”); Instruction F:343 (defining “sexual penetration”).

3. Where the existence of a common law marriage is at issue, draft a supplemental instruction that defines the essential elements of a common law marriage. *See* *People v. Lucero*, 747 P.2d 660, 663 (Colo. 1987).

### 6-3:03

#### **Aggravated Incest (Natural Child Under the Age of Twenty-One)**

**The elements of the crime of aggravated incest (natural child) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. married or inflicted sexual penetration or sexual intrusion on, or subjected to sexual contact,**
- 5. his [her] natural child,**
- 6. who was under twenty-one years of age.**

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aggravated incest (natural child).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**

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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of aggravated incest (natural child).**

### COMMENT

1. *See* § 18-6-302(1)(a), C.R.S. 2019.

2. *See* Instruction F:52 (defining “child,” a term which need not be separately defined if the statutory age requirement is incorporated into the instruction as shown above); Instruction F:195 (defining “knowingly”); Instruction F:337 (defining “sexual contact”); Instruction F:340 (defining “sexual intrusion”); Instruction F:343 (defining “sexual penetration”).

3. Where the existence of a common law marriage is at issue, draft a supplemental instruction that defines the essential elements of a common law marriage. *See* *People v. Lucero*, 747 P.2d 660, 663 (Colo. 1987).

### 6-3:04

#### **Aggravated Incest (Stepchild, or Child by Adoption)**

**The elements of the crime of aggravated incest ([stepchild] [child by adoption]) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. inflicted sexual penetration or sexual intrusion on, or subjected to sexual contact,
5. his [her] [stepchild] [child by adoption],
6. who was under twenty-one years of age, and
7. to whom the defendant was not legally married.
- [8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



## INCEST

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aggravated incest ([stepchild] [child by adoption]).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aggravated incest ([stepchild] [child by adoption]).

### COMMENT

1. See § 18-6-302(1)(a), C.R.S. 2019.

2. See Instruction F:52 (defining “child,” a term which need not be separately defined if the statutory age requirement is incorporated into the instruction as shown above); Instruction F:195 (defining “knowingly”); Instruction F:337 (defining “sexual contact”); Instruction F:340 (defining “sexual intrusion”); Instruction F:343 (defining “sexual penetration”).

3. Where the existence of a common law marriage is at issue, draft a supplemental instruction that defines the essential elements of a common law marriage. See *People v. Lucero*, 747 P.2d 660, 663 (Colo. 1987).

### 6-3:05

#### **Aggravated Incest (Descendant, Brother, Sister, Uncle, Aunt, Nephew, or Niece)**

The elements of the crime of aggravated incest ([descendant] [brother] [sister] [uncle] [aunt] [nephew] [niece]) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. married, or inflicted sexual penetration or sexual intrusion on, or subjected to sexual contact,

## COLORADO JURY INSTRUCTIONS—CRIMINAL

5. [a descendant] [a [brother] [sister] of the whole or half blood] [an [uncle] [aunt] [nephew] [niece] of the whole blood who is under ten years of age].

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aggravated incest ([descendant] [brother] [sister] [uncle] [aunt] [nephew] [niece]).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aggravated incest ([descendant] [brother] [sister] [uncle] [aunt] [nephew] [niece]).

### COMMENT

1. See § 18-6-302(1)(b), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:337 (defining “sexual contact”); Instruction F:340 (defining “sexual intrusion”); Instruction F:343 (defining “sexual penetration”).

3. Although section 18-6-302(1)(b), C.R.S. 2019, uses the term “descendant,” it is not followed by the word “including” and the section does not contain a definition of the term. Further, the definition of “descendant” that appears in section 18-6-301(1), C.R.S. 2019, applies to that “section only.”

4. Where the existence of a common law marriage is at issue, draft a supplemental instruction that defines the essential elements of a common law marriage. See *People v. Lucero*, 747 P.2d 660, 663 (Colo. 1987).

## WRONGS TO CHILDREN

### CHAPTER 6-4

## WRONGS TO CHILDREN

6-4:01

### Child Abuse (Knowingly or Recklessly)

The elements of the crime of child abuse (knowingly or recklessly) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly or recklessly,
4. caused an injury to a child's life or health, or permitted a child to be unreasonably placed in a situation that posed a threat of injury to the child's life or health, or engaged in a continued pattern of conduct that resulted in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately resulted in the death of a child or serious bodily injury to a child.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of child abuse (knowingly or recklessly).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of child abuse (knowingly or recklessly).



## COLORADO JURY INSTRUCTIONS—CRIMINAL

### COMMENT

1. See § 18-6-401(1)(a), (7)(a)(I), (III), (V), C.R.S. 2019.

2. See Instruction F:49 (defining “child”); Instruction F:195 (defining “knowingly”); Instruction F:308 (defining “recklessly”); Instruction F:332 (defining “serious bodily injury”).

3. Section 18-6-401(1)(a) uses the phrase “injury to a child’s life or health,” rather than the more familiar term: “bodily injury.” However, a division of the court of appeals has concluded that the type of “injury” required under section 18-6-401(1)(a) is synonymous with “bodily injury,” as defined by section 18-1-901(3)(c), C.R.S. 2019 (“‘Bodily injury’ means physical pain, illness, or any impairment of physical or mental condition.”). See *People v. Sherrod*, 204 P.3d 472, 475 (Colo. App. 2007) (“Section 18-6-401(1)(a) contains no language that would accord the term ‘health’ something other than its commonly understood meaning. We therefore interpret the term ‘health’ to include both physical and mental well-being.”), *rev’d on other grounds*, 204 P.3d 466 (Colo. 2009); see also Instruction F:36 (defining “bodily injury”).

4. See Instruction H:10 (affirmative defense of “physical force pursuant to a special relationship”); Instruction H:48 (affirmative defense of “safe surrender of a newborn”).

5. See *People v. Casias*, 2012 COA 117, ¶ 35, 312 P.3d 208, 215 (“In connection with the child abuse charge, the prosecution had to prove, with respect to the ‘knowing’ mental state, only that defendant was aware of the abusive nature of his conduct in relation to J.C. or of the circumstances in which he committed an act against her well-being; and with respect to the ‘reckless’ element, only that defendant was aware of (and consciously chose to disregard) a substantial and unjustifiable risk that his conduct could result in injury to her life or health.”).

6. + See *Friend v. People*, 2018 CO 90, ¶ 37, 429 P.3d 1191, 1197 (holding that child abuse resulting in death is a lesser included offense of child abuse murder).

7. + In 2019, the Committee added Comment 6.

### 6-4:02

#### Child Abuse (Criminal Negligence)

**The elements of the crime of child abuse (criminal negligence) are:**

**1. That the defendant,**

**2. in the State of Colorado, at or about the date and place charged,**

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### 3. with criminal negligence,

4. caused an injury to a child's life or health, or permitted a child to be unreasonably placed in a situation that posed a threat of injury to the child's life or health, or engaged in a continued pattern of conduct that resulted in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately resulted in the death of a child or serious bodily injury to a child.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of child abuse (criminal negligence).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of child abuse (criminal negligence).

### COMMENT

1. See § 18-6-401(1)(a), (7)(a)(II), (IV), (VI), C.R.S. 2019.

2. See Instruction F:36 (defining "bodily injury"); Instruction F:49 (defining "child"); Instruction F:79 (defining "criminal negligence"); Instruction F:332 (defining "serious bodily injury").

3. See Instruction H:10 (affirmative defense of "physical force pursuant to a special relationship"); Instruction H:48 (affirmative defense of "safe surrender of a newborn").

4. Section 18-6-401(1)(a) uses the phrase "injury to a child's life or health," rather than the more familiar term: "bodily injury." However, a division of the court of appeals has concluded that the type of "injury" required under section 18-6-401(1)(a) is synonymous with "bodily injury," as defined by section 18-1-901(3)(c), C.R.S. 2019 (" 'Bodily injury' means physical pain, illness, or any impairment of physical or mental

## COLORADO JURY INSTRUCTIONS—CRIMINAL

condition.”). *See* *People v. Sherrod*, 204 P.3d 472, 475 (Colo. App. 2007) (“Section 18-6-401(1)(a) contains no language that would accord the term ‘health’ something other than its commonly understood meaning. We therefore interpret the term ‘health’ to include both physical and mental well-being.”), *rev’d on other grounds*, 204 P.3d 466 (Colo. 2009); *see also* Instruction F:36 (defining “bodily injury”).

### 6-4:03

#### **Child Abuse (Knowing or Reckless Excision or Infibulation of Female Genitalia)**

The elements of the crime of child abuse (knowing or reckless excision or infibulation of female genitalia) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
- [3. knowingly or recklessly,
4. excised or infibulated, in whole or in part,
5. the labia majora, labia minora, vulva, or clitoris of a female child.]

[3. was a parent, guardian, or other person legally responsible for a female child or charged with the care or custody of a female child, and

4. knowingly or recklessly,
5. allowed the excision or infibulation, in whole or in part,
6. of the child’s labia majora, labia minora, vulva, or clitoris.]

[\_. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of child abuse (knowing or reckless excision or infibulation of female genitalia).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of child abuse (knowing or reckless excision or infibulation of female genitalia).

### COMMENT

1. See § 18-6-401(1)(b)(I), C.R.S. 2019.

2. See Instruction F:49 (defining “child”); Instruction F:195 (defining “knowingly”); Instruction F:308 (defining “recklessly”).

3. The statute does not define the terms “clitoris,” “excision,” “infibulation,” “labia majora,” “labia minora,” or “vulva.” See, e.g., *Webster’s Third New International Dictionary* 425, 792, 1159, 1259, 2567 (2002) (p. 425, defining “clitoris” as “a small erectile organ at the anterior or ventral part of the vulva homologous to the penis in the male”) (p. 792, defining “excise” as “to cut out,” and defining “excision” as “the act or procedure of excising”) (p. 1159, defining “infibulation” as “an act or practice of fastening by ring, clasp, or stitches, the labia majora in girls and the prepuce in boys in order to prevent sexual intercourse”) (p. 1259, defining “labia majora” as “the outer fatty folds bounding the vulva”) (p. 1259, defining “labia minora” as “the inner highly vascular largely connective-tissue folds bounding the vulva”) (p. 2567, defining “vulva” as “the external part of the female genital organs”).

4. Section 18-6-401(b)(II), C.R.S. 2019, provides as follows:

Belief that the conduct described in subparagraph (I) of this paragraph (b) is required as a matter of custom, ritual, or standard practice or consent to the conduct by the child on whom it is performed or by the child’s parent or legal guardian shall not be an affirmative defense to a charge of child abuse under this paragraph (b).

This provision appears to state a proposition of law that governs the trial court’s rulings concerning the availability of affirmative defense instructions. Accordingly, the Committee has not drafted a special instruction embodying this concept.

5. Section 18-6-401(1)(b)(III), C.R.S. 2019, establishes an exemption

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from criminal liability for certain types of surgical procedures. However, the Committee has not drafted a model affirmative defense instruction.

6. In 2015, the Committee corrected Comment 5 by adding a reference to a subsection in the citation to section 18-6-401(1)(b)(III).

**6-4:04**

### **Child Abuse (Criminally Negligent Excision or Infibulation of Female Genitalia)**

**The elements of the crime of child abuse (criminally negligent excision or infibulation of female genitalia) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- [3. with criminal negligence,**
- 4. excised or infibulated, in whole or in part,**
- 5. the labia majora, labia minora, vulva, or clitoris of a female child.]**
- [3. was a parent, guardian, or other person legally responsible for a female child or charged with the care or custody of a female child, and**
- 4. with criminal negligence,**
- 5. allowed the excision or infibulation, in whole or in part,**
- 6. of the child's labia majora, labia minora, vulva, or clitoris.]**
- [\_. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of child abuse (criminally negligent excision or infibulation of female genitalia).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of child abuse (criminally negligent excision or infibulation of female genitalia).

COMMENT

1. See § 18-6-401(1)(b)(I), C.R.S. 2019.

2. See Instruction F:49 (defining “child”); Instruction F:79 (defining “criminal negligence”).

3. See Instruction 6-4:03, Comment 3 (discussion of terms not defined by statute), Comment 4 (discussion of affirmative defenses that are unavailable pursuant to statute), Comment 5 (discussion of affirmative defense).

6-4:05

**Child Abuse (Knowing Exposure to Controlled Substance Manufacturing Activities or Precursor Chemicals)**

The elements of the crime of child abuse (knowing exposure to controlled substance manufacturing activities or precursor chemicals) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. in the presence of a child, or on the premises where a child was found, or where a child resided, or in a vehicle containing a child,



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**[5. engaged in the manufacture or attempted manufacture of a controlled substance.]**

**[5. possessed ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers,**

**6. with the intent to use the product as an immediate precursor in the manufacture of a controlled substance.]**

**[\_. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of child abuse (knowing exposure to controlled substance manufacturing activities or precursor chemicals).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of child abuse (knowing exposure to controlled substance manufacturing activities or precursor chemicals).**

**COMMENT**

1. *See* § 18-6-401(c)(I), C.R.S. 2019.

2. *See* Instruction F:49 (defining “child”); Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules that are identified in section § 18-18-102(5), C.R.S. 2019); Instruction F:179 (defining “immediate precursor”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”); *see also* Instruction F:283 (defining “premises” for purposes of burglary and related offenses).

3. If the defendant is not separately charged with a controlled substance offense, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately

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after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. *See* Instruction G2:01 (criminal attempt); Instruction 18:05 (manufacture of a controlled substance).

4. *See* Instruction H:68 (defining the affirmative defense of “medical marijuana,” which is unavailable, pursuant to Colo. Const. Art. XVIII, § 14(2)(a), (5)(a)(I), if the defendant “[e]ngaged in the medical use of marijuana in a way that endanger[ed] the health or well-being of any person”).

### 6-4:06.SP

#### **Child Abuse—Special Instruction (Knowing Exposure to Controlled Substance Manufacturing Activities or Precursor Chemicals)**

**It is no defense to the crime of child abuse (knowing exposure to controlled substance manufacturing activities or precursor chemicals), that the defendant did not know a child was present, a child could be found, a child resided on the premises, or that a vehicle contained a child.**

#### **COMMENT**

1. Section 18-6-401(1)(c)(I), C.R.S. 2019.

### 6-4:07

#### **Child Abuse (Knowingly Allowing Exposure to Methamphetamine Manufacturing Activities)**

**The elements of the crime of child abuse (knowingly allowing exposure to methamphetamine manufacturing activities) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**



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4. was a parent or lawful guardian or person having the care or custody of a child, and

5. allowed the child to be present at or reside at a premises or to be in a vehicle where the parent, guardian, or person having care or custody of the child knew, or reasonably should have known, that another person was engaged in the manufacture or attempted manufacture of methamphetamine.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of child abuse (knowingly allowing exposure to methamphetamine manufacturing activities).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of child abuse (knowingly allowing exposure to methamphetamine manufacturing activities).

COMMENT

1. See § 18-6-401(c)(II), C.R.S. 2019.

2. See Instruction F:49 (defining “child”); Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules that are identified in section § 18-18-102(5), C.R.S. 2019); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”); see also Instruction F:283 (defining “premises” for purposes of burglary and related offenses).

3. If the defendant is not separately charged with a controlled substance offense, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theo-



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ries of criminal liability for the referenced offense. *See* Instruction G2:01 (criminal attempt); Instruction 18:05 (manufacture of a controlled substance).

6-4:08

### **Child Abuse (Knowingly Allowing Exposure to Precursor Chemicals)**

The elements of the crime of child abuse (knowingly allowing exposure to precursor chemicals) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a parent or lawful guardian or person having the care or custody of a child, and
5. allowed the child to be present or reside at a premises or to be in a vehicle where the parent, guardian, or person having care or custody of the child knew, or reasonably should have known, that another person possessed ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the product as an immediate precursor in the manufacture of a controlled substance.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of child abuse (knowingly allowing exposure to precursor chemicals).

After considering all the evidence, if you decide

## COLORADO JURY INSTRUCTIONS—CRIMINAL

**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of child abuse (knowingly allowing exposure to precursor chemicals).**

### COMMENT

1. *See* § 18-6-401(c)(III), C.R.S. 2019.

2. *See* Instruction F:49 (defining “child”); Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules that are identified in section § 18-18-102(5), C.R.S. 2019); Instruction F:179 (defining “immediate precursor”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”); *see also* Instruction F:283 (defining “premises” for purposes of burglary and related offenses).

3. If the defendant is not separately charged with a controlled substance offense, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. *See* Instruction G2:01 (criminal attempt); Instruction 18:05 (manufacture of a controlled substance).

### 6-4:09.INT

#### Child Abuse—Interrogatory (Death)

**If you find the defendant not guilty of child abuse, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of child abuse, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the child abuse result in death? (Answer “Yes” or “No”)**

**The prosecution has the burden to prove, beyond a reasonable doubt, that the child abuse resulted in death.**

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After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-6-401(7)(a)(I), (II), C.R.S. 2019.

2. See, e.g., Instruction E:28 (special verdict form).

3. It is not necessary to submit a special interrogatory asking the jury to determine whether the child abuse resulted in death if the instruction defining the offense is drafted in such a manner that, in order to find the defendant guilty, the jury necessarily must find that the abuse resulted in death.

### 6-4:10.INT

#### Child Abuse—Interrogatory (Serious Bodily Injury)

If you find the defendant not guilty of child abuse, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of child abuse, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the child abuse result in serious bodily injury? (Answer “Yes” or “No”)**

The prosecution has the burden to prove, beyond a reasonable doubt, that the child abuse resulted in serious bodily injury.

After considering all the evidence, if you decide



the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

#### COMMENT

1. See § 18-6-401(7)(a)(III), (IV), C.R.S. 2019.

2. See, e.g., Instruction E:28 (special verdict form).

3. It is not necessary to submit a special interrogatory asking the jury to determine whether the child abuse resulted in serious bodily injury if the instruction defining the offense is drafted in such a manner that, in order to find the defendant guilty, the jury must necessarily find that the abuse resulted in serious bodily injury.

#### 6-4:11.INT

##### Child Abuse—Interrogatory (Injury Other Than Serious Bodily Injury)

If you find the defendant not guilty of child abuse, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of child abuse, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the abuse cause any injury other than serious bodily injury? (Answer “Yes” or “No”)

The abuse caused any injury other than serious bodily injury only if:

1. the child abuse resulted in any injury other than injury which, either at the time of the actual

**injury or at a later time, involved a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

#### COMMENT

1. *See* § 18-6-401(7)(a)(V), C.R.S. 2019.

2. *See, e.g.*, Instruction E:28 (special verdict form).

3. It is not necessary to submit a special interrogatory asking the jury to determine whether the child abuse resulted in any injury other than serious bodily injury if the instruction defining the offense is drafted in such a manner that, in order to find the defendant guilty, the jury necessarily must find that the abuse resulted in bodily injury. For example, a jury could not logically find a defendant guilty of child abuse involving mutilation of female genitalia, as defined in section 18-6-401(b)(I), and then make a finding that the child abuse resulted in “no . . . injury” for purposes of section 18-6-401(7)(b).

4. It appears unlikely that the “injury” defined by section 18-6-401(7)(a)(V) could include an injury that does not meet the definition of a “bodily injury” under section 18-1-901(3)(c), C.R.S. 2019. Nevertheless, out of an abundance of caution, the instruction uses the language of the statute and asks whether the child abuse resulted in an injury other than serious bodily injury.

6-4:12.INT

**Child Abuse—Interrogatory (Position of Trust)**

If you find the defendant not guilty of child abuse, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of child abuse, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant violate a position of trust?  
(Answer “Yes” or “No”)**

**The defendant violated a position of trust only if:**

- 1. the defendant was in a position of trust in relation to the child, and**
- 2. participated in a continued pattern of conduct that resulted in the child’s malnourishment or failed to ensure the child’s access to proper medical care.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

1. See § 18-6-401(7)(e)(I), C.R.S. 2019.



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2. See Instruction F:280 (defining “position of trust”); see, e.g., Instruction E:28 (special verdict form).

3. In a case where the defendant has a prior qualifying conviction under section 18-6-401(7)(e), it is unnecessary to ask the jury to determine any of the circumstances enumerated in section 18-6-401(7)(e)(I)–(V) if there is no rational basis for the jury to find the defendant guilty without also finding that the child abuse resulted in death or serious bodily injury (because the sentence enhancement factors of section 18-6-401(7)(e)(I)–(V) apply only to cases that involve either a non-serious injury, or no injury at all). See § 18-6-401(7)(a)(I) to (IV), C.R.S. 2019.

4. See *People v. Becker*, 2014 COA 36, ¶ 2, 347 P.3d 1168, 1170 (“a prior child abuse conviction, as specified in section 18-6-401(7)(e), C.R.S. 2013, serves as a sentence enhancer—and not as an element—of the child abuse crimes set forth in sections 18-6-401(1)(a)(7)(b)(I) to (II), C.R.S. 2013”).

5. In 2015, the Committee added Comment 4.

### 6-4:13.INT

#### **Child Abuse—Interrogatory (Continued Pattern of Punishment, Isolation, or Confinement)**

**If you find the defendant not guilty of child abuse, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of child abuse, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the defendant participate in a continued pattern? (Answer “Yes” or “No”)**

**The defendant participated in a continued pattern only if:**

**1. the defendant participated in a continued pattern of cruel punishment, or unreasonable isolation, or confinement of the child.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

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After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-6-401(7)(e)(II), C.R.S. 2019.

2. See, e.g., Instruction E:28 (special verdict form).

3. In a case where the defendant has a prior qualifying conviction under section 18-6-401(7)(e), it is unnecessary to ask the jury to determine any of the circumstances enumerated in section 18-6-401(7)(e)(I)–(V) if there is no rational basis for the jury to find the defendant guilty without also finding that the child abuse resulted in death or serious bodily injury (because the sentence enhancement factors of section 18-6-401(7)(e)(I)–(V) apply only to cases that involve either a non-serious injury, or no injury at all). See § 18-6-401(7)(a)(I) to (IV), C.R.S. 2019.

### 6-4:14.INT

#### Child Abuse—Interrogatory (Repeated Threats)

If you find the defendant not guilty of child abuse, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of child abuse, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the defendant make repeated threats? (Answer “Yes” or “No”)

The defendant made repeated threats only if:

1. the defendant made repeated threats of harm

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or death to the child, or to a significant person in the child's life, and

2. the threats were made in the presence of the child.

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark "Yes" in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark "No" in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. *See* § 18-6-401(7)(e)(III), C.R.S. 2019.

2. *See, e.g.*, Instruction E:28 (special verdict form).

3. In a case where the defendant has a prior qualifying conviction under section 18-6-401(7)(e), it is unnecessary to ask the jury to determine any of the circumstances enumerated in section 18-6-401(7)(e)(I)–(V) if there is no rational basis for the jury to find the defendant guilty without also finding that the child abuse resulted in death or serious bodily injury (because the sentence enhancement factors of section 18-6-401(7)(e)(I)–(V) apply only to cases that involve either a non-serious injury, or no injury at all). *See* § 18-6-401(7)(a)(I) to (IV), C.R.S. 2019.

### 6-4:15.INT

#### Child Abuse—Interrogatory (Continued Pattern of Acts of Domestic Violence)

If you find the defendant not guilty of child abuse, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of child



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abuse, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant commit a continued pattern of domestic violence? (Answer “Yes” or “No”)**

**The defendant committed a continued pattern of domestic violence only if:**

- 1. the defendant committed a continued pattern of acts of domestic violence,**
- 2. in the presence of the child.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. See § 18-6-401(7)(e)(IV), C.R.S. 2019.

2. See Instruction F:108 (defining “domestic violence”); see, e.g., Instruction E:28 (special verdict form).

3. In a case where the defendant has a prior qualifying conviction under section 18-6-401(7)(e), it is unnecessary to ask the jury to determine any of the circumstances enumerated in section 18-6-401(7)(e)(I)–(V) if there is no rational basis for the jury to find the defendant guilty without also finding that the child abuse resulted in death or serious bodily injury (because the sentence enhancement factors of section 18-6-401(7)(e)(I)–(V) apply only to cases that involve either a non-serious injury, or no injury at all). See § 18-6-401(7)(a)(I) to (IV), C.R.S. 2019.

6-4:16.INT

**Child Abuse—Interrogatory (Continued Pattern of Extreme Deprivation)**

If you find the defendant not guilty of child abuse, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of child abuse, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant participate in a continued pattern of extreme deprivation? (Answer “Yes” or “No”)**

The defendant participated in a continued pattern of extreme deprivation only if:

1. the defendant participated in a continued pattern of extreme deprivation of hygienic or sanitary conditions in the child’s daily living environment.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

**COMMENT**

1. See § 18-6-401(7)(e)(V), C.R.S. 2019.

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2. *See, e.g.*, Instruction E:28 (special verdict form).

3. In a case where the defendant has a prior qualifying conviction under section 18-6-401(7)(e), it is unnecessary to ask the jury to determine any of the circumstances enumerated in section 18-6-401(7)(e)(I)–(V) if there is no rational basis for the jury to find the defendant guilty without also finding that the child abuse resulted in death or serious bodily injury (because the sentence enhancement factors of section 18-6-401(7)(e)(I)–(V) apply only to cases that involve either a non-serious injury, or no injury at all). *See* § 18-6-401(7)(a)(I) to (IV), C.R.S. 2019.

### 6-4:17

#### **Sexual Exploitation of a Child (Explicit Sexual Conduct for Sexually Exploitative Material)**

**The elements of the crime of sexual exploitation of a child (explicit sexual conduct for sexually exploitative material) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. for any purpose,
5. caused, induced, enticed, or permitted a child to engage in, or be used for,
6. any explicit sexual conduct for the making of any sexually exploitative material.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of sexual exploitation of a child (explicit sexual conduct for sexually exploitative material).



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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sexual exploitation of a child (explicit sexual conduct for sexually exploitative material).**

### COMMENT

1. *See* § 18-6-403(3)(a), C.R.S. 2019.

2. *See* Instruction F:50 (defining “child”); Instruction F:132 (defining “explicit sexual conduct”); Instruction F:341 (defining “sexually exploitative material”).

3. *See* Instruction H:36 (affirmative defense of “mistake as to age”).

4. The words “for any purpose” are included as an element because section 18-6-403(3) indicates that this phrase modifies all of the provisions in section 18-6-403(3)(a)–(d). However, four of those statutory subsections identify the prohibited purpose that must be proved, and the only one that does not—section 18-6-403(3)(b.5)—repeats the “for any purpose” language. Accordingly, except in cases involving a charge under section 18-6-403(3)(b.5), it may be appropriate to eliminate the “for any purpose” element.

5. Section 18-6-403(7) provides that a juvenile charged with posting a private image by a juvenile, *see* Instructions 7-1:08 and 7-1:09, is not subject to prosecution for this offense “for the same electronic or digital photograph, video, or image arising out of the same criminal episode.” *Cf.* § 18-1-408, C.R.S. 2019 (prosecution of multiple counts for same act).

6. In 2017, the Committee added Comment 5 pursuant to new legislation. *See* Ch. 390, sec. 3, § 18-6-403(7), 2017 Colo. Sess. Laws 2012, 2013.

## 6-4:18

### **Sexual Exploitation of a Child (Publication)**

**The elements of the crime of sexual exploitation of a child (publication) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**

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3. knowingly,
4. for any purpose,
5. prepared, arranged for, published (including but not limited to publishing through digital or electronic means), produced, promoted, made, sold, financed, offered, exhibited, advertised, dealt in, or distributed (including but not limited to distributing through digital or electronic means),
6. any sexually exploitative material.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of sexual exploitation of a child (publication).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sexual exploitation of a child (publication).

**COMMENT**

1. See § 18-6-403(3)(b), C.R.S. 2019.
2. See Instruction F:50 (defining “child”); Instruction F:341 (defining “sexually exploitative material”).
3. See Instruction H:36 (affirmative defense of “mistake as to age”).
4. The words “for any purpose” are included as an element because section 18-6-403(3) indicates that this phrase modifies all of the provisions in section 18-6-403(3)(a)–(d). However, four of those statutory subsections identify the prohibited purpose that must be proved, and the only one that does not—section 18-6-403(3)(b.5)—repeats the “for



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any purpose” language. Accordingly, except in cases involving a charge under section 18-6-403(3)(b.5), it may be appropriate to eliminate the “for any purpose” element.

5. *See* *People v. Mantos*, 250 P.3d 586, 590 (Colo. App. 2009) (downloading and saving already-existing material in a share-capable computer file is not proscribed by the terms “prepares” and “arranges for” in section 18-6-403(3)(b)).

6. *See* *People v. Rowe*, 2012 COA 90, ¶ 13, 318 P.3d 57, 60 (“Reading the plain language of [section 18-6-403(3)(b)] and construing the term ‘offer’ according to its common usage, we hold that a defendant ‘offers’ sexually exploitative material by making it available or accessible to others. In the context of a peer-to-peer file sharing network, a defendant offers sexually exploitative material by knowingly leaving it in the share folder for other users to download.”).

7. Section 18-6-403(3.5) provides that a juvenile is not subject to prosecution for this offense if his or her conduct is “limited to the elements of the petty offense of possession of a private image by a juvenile,” *see* Instruction 7-1:11, or is “limited to the elements of the civil infraction of exchange of a private image by a juvenile,” *see* § 18-7-109(3), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

8. Section 18-6-403(7) provides that a juvenile charged with posting a private image by a juvenile, *see* Instructions 7-1:08 and 7-1:09, is not subject to prosecution for this offense “for the same electronic or digital photograph, video, or image arising out of the same criminal episode.” *Cf.* § 18-1-408, C.R.S. 2019 (prosecution of multiple counts for same act).

9. + *See* *People v. Robles-Sierra*, 2018 COA 28, ¶¶ 39–40, 44–45, — P.3d — (holding that, because the General Assembly “sought to cut a wide swath” in enacting the statute, the defendant’s activity of downloading sexually exploitative material off a peer-to-peer sharing network and making it accessible to others qualified as both “publishing” and “distributing”).

10. In 2017, the Committee added Comments 7 and 8 pursuant to new legislation. *See* Ch. 390, sec. 3, § 18-6-403(3.5), (7), 2017 Colo. Sess. Laws 2012, 2013.

11. + In 2019, the Committee added Comment 9.

### 6-4:19

#### **Sexual Exploitation of a Child (Possession or Control)**

**The elements of the crime of sexual exploitation of a child (possession or control) are:**



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- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. for any purpose,**
- 5. possessed or controlled,**
- 6. any sexually exploitative material.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of sexual exploitation of a child (possession or control).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sexual exploitation of a child (possession or control).**

**COMMENT**

1. *See* § 18-6-403(3)(b.5), C.R.S. 2019.
2. *See* Instruction F:50 (defining “child”); Instruction F:281 (defining “possession”); Instruction F:341 (defining “sexually exploitative material”).
3. *See* Instruction H:36 (affirmative defense of “mistake as to age”).
4. Section 18-6-403(3)(b.5), C.R.S. 2019, states that it:

does not apply to law enforcement personnel, defense counsel personnel, or court personnel in the performance of their official duties, nor does it apply to physicians, psychologists, therapists, or social workers, so long as such persons are licensed in the state of Colorado and the persons possess such

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materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site.

See Instruction F:90.5 (defining “defense counsel personnel”); Instruction F:196.35 (defining “law enforcement personnel”). However, the Committee has not drafted a model affirmative defense instruction. See also *People v. Arapahoe Cty. Court*, 74 P.3d 429, 431 (Colo. App. 2003) (“we do not address the argument that the statutory exception in § 18-6-403(3)(b.5) for court personnel does not include defense counsel”).

5. The words “for any purpose” are included as an element because section 18-6-403(3) indicates that this phrase modifies all of the provisions in section 18-6-403(3)(a)–(d). However, four of those statutory subsections identify the prohibited purpose that must be proved, and the only one that does not—section 18-6-403(3)(b.5)—repeats the “for any purpose” language. Accordingly, except in cases involving a charge under section 18-6-403(3)(b.5), it may be appropriate to eliminate the “for any purpose” element.

6. See *Fabiano v. Armstrong*, 141 P.3d 907, 910 (Colo. App. 2006) (section 18-6-403(3)(b.5) does not contain any requirement that the prohibited material be retained for any minimum period of time).

7. Section 18-6-403(3.5) provides that a juvenile is not subject to prosecution for this offense if his or her conduct is “limited to the elements of the petty offense of possession of a private image by a juvenile,” see Instruction 7-1:11, or is “limited to the elements of the civil infraction of exchange of a private image by a juvenile,” see § 18-7-109(3), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

8. Section 18-6-403(7) provides that a juvenile charged with posting a private image by a juvenile, see Instructions 7-1:08 and 7-1:09, is not subject to prosecution for this offense “for the same electronic or digital photograph, video, or image arising out of the same criminal episode.” Cf. § 18-1-408, C.R.S. 2019 (prosecution of multiple counts for same act).

9. + See *People in Interest of T.B.*, 2019 CO 53, ¶ 33, 445 P.3d 1049, 1056 (holding that liability for possessing sexually exploitative material “does not require proof that the material depicts ‘an act or acts of sexual abuse of a child’ ”).

10. In 2017, the Committee added Comments 7 and 8 pursuant to new legislation. See Ch. 390, sec. 3, § 18-6-403(3.5), (7), 2017 Colo. Sess. Laws 2012, 2013. The Committee also modified the statutory quotation in Comment 4 and added the cross-references to Instructions F:90.5 and F:196.35 pursuant to a legislative amendment. See Ch. 141, sec. 1, § 18-6-403(3)(b.5), 2017 Colo. Sess. Laws 470, 470 to 71.

11. + In 2019, the Committee added Comment 9.

6-4:20

**Sexual Exploitation of a Child (Possession With Intent)**

The elements of the crime of sexual exploitation of a child (possession with intent) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. for any purpose,
  5. possessed,
  6. with the intent to deal in, sell, or distribute (including but not limited to distributing through digital or electronic means),
  7. any sexually exploitative material.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of sexual exploitation of a child (possession with intent).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sexual exploitation of a child (possession with intent).

**COMMENT**

1. See § 18-6-403(3)(c), C.R.S. 2019.



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2. See Instruction F:50 (defining “child”); Instruction F:281 (defining “possession”); Instruction F:341 (defining “sexually exploitative material”).

3. See Instruction H:36 (affirmative defense of “mistake as to age”).

4. The words “for any purpose” are included as an element because section 18-6-403(3) indicates that this phrase modifies all of the provisions in section 18-6-403(3)(a)–(d). However, four of those statutory subsections identify the prohibited purpose that must be proved, and the only one that does not—section 18-6-403(3)(b.5)—repeats the “for any purpose” language. Accordingly, except in cases involving a charge under section 18-6-403(3)(b.5), it may be appropriate to eliminate the “for any purpose” element.

5. Section 18-6-403(7) provides that a juvenile charged with posting a private image by a juvenile, *see* Instructions 7-1:08 and 7-1:09, is not subject to prosecution for this offense “for the same electronic or digital photograph, video, or image arising out of the same criminal episode.” *Cf.* § 18-1-408, C.R.S. 2019 (prosecution of multiple counts for same act).

6. In 2017, the Committee added Comment 5 pursuant to new legislation. *See* Ch. 390, sec. 3, § 18-6-403(7), 2017 Colo. Sess. Laws 2012, 2013.

### 6-4:21

#### **Sexual Exploitation of a Child (Explicit Sexual Conduct for a Performance)**

**The elements of the crime of sexual exploitation of a child (explicit sexual conduct for a performance) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. for any purpose,
5. caused, induced, enticed, or permitted a child to engage in, or be used for,

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6. any explicit sexual conduct,

7. for the purpose of producing a performance.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of sexual exploitation of a child (explicit sexual conduct for a performance).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sexual exploitation of a child (explicit sexual conduct for a performance).

COMMENT

1. See § 18-6-403(3)(d), C.R.S. 2019.

2. See Instruction F:50 (defining “child”); Instruction F:132 (defining “explicit sexual conduct”); Instruction F:281 (defining “possession”); Instruction F:341 (defining “sexually exploitative material”).

3. See Instruction H:36 (affirmative defense of “mistake as to age”).

4. The words “for any purpose” are included as an element because section 18-6-403(3) indicates that this phrase modifies all of the provisions in section 18-6-403(3)(a)–(d). However, four of those statutory subsections identify the prohibited purpose that must be proved, and the only one that does not—section 18-6-403(3)(b.5)—repeats the “for any purpose” language. Accordingly, except in cases involving a charge under section 18-6-403(3)(b.5), it may be appropriate to eliminate the “for any purpose” element.

5. Section 18-6-403(7) provides that a juvenile charged with posting a private image by a juvenile, *see* Instructions 7-1:08 and 7-1:09, is not subject to prosecution for this offense “for the same electronic or digital photograph, video, or image arising out of the same criminal episode.” *Cf.* § 18-1-408, C.R.S. 2019 (prosecution of multiple counts for same act).

## WRONGS TO CHILDREN

6. In 2017, the Committee added Comment 5 pursuant to new legislation. *See* Ch. 390, sec. 3, § 18-6-403(7), 2017 Colo. Sess. Laws 2012, 2013.

### 6-4:22.INT

#### **Sexual Exploitation of a Child—Interrogatory (Moving Images)**

**If you find the defendant not guilty of sexual exploitation of a child, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of sexual exploitation of a child, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the defendant possess moving images? (Answer “Yes” or “No”)**

**The defendant possessed moving images only if:**

**1. the defendant’s possession of sexually exploitative material was of a video, video tape, or motion picture.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**



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### COMMENT

1. See § 18-6-403(5)(b)(II), C.R.S. 2019.

2. See Instruction F:234 (defining “motion picture”); Instruction F:389 (defining “video” and “video tape”); see, e.g., Instruction E:28 (special verdict form).

### 6-4:23.INT

#### **Sexual Exploitation of a Child—Interrogatory (Quantity)**

If you find the defendant not guilty of sexual exploitation of a child, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of sexual exploitation of a child, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant possess a large number of items? (Answer “Yes” or “No”)**

**The defendant possessed a large number of items only if:**

1. the defendant’s possession was of more than twenty different items qualifying as sexually exploitative material.

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have**

the foreperson sign the designated line of the verdict form.

**COMMENT**

1. See § 18-6-403(5)(b)(II), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

**6-4:24**

**Procurement of a Child for Sexual Exploitation**

The elements of the crime of procurement of a child for sexual exploitation are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. gave, transported, provided, or made available, or offered to give, transport, provide, or make available,
5. a child,
6. to another person,
7. for the purpose of sexual exploitation of a child.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of procurement of a child for sexual exploitation.

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of procurement of a child for sexual exploitation.**

### COMMENT

1. *See* § 18-6-404, C.R.S. 2019.
2. *See* Instruction F:50 (defining “child”); Instruction F:185 (defining “intentionally”).
3. If the defendant is not separately charged with sexual exploitation of a child, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. *See* Instructions 6-4:17 to 6-4:21. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

## CHAPTER 6-6

### HARBORING A MINOR

#### CHAPTER COMMENTS

1. Section 18-6-601(1)(b), C.R.S. 2019, provides as follows: “If the shelter provided to the minor is by a licensed child care facility, including a licensed homeless youth shelter, the minor, despite the minor’s status, may reside at such facility or shelter for a period not to exceed two weeks after the time of intake, pursuant to the procedures set forth in article 5.7 of title 26, C.R.S.” However, the Committee has not drafted a model affirmative defense instruction.
2. Section 18-6-601(1)(c), C.R.S. 2019, creates a defense to the prosecution of every offense in this chapter where “the defendant had custody of the minor or lawful parenting time with the minor pursuant to a court order.” However, the Committee has not drafted a model affirmative defense instruction.

3. The Committee added this chapter in 2016.

### 6-6:01

#### Harboring a Minor (Failing to Release)

**The elements of the crime of harboring a minor (failing to release) are:**



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1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. provided shelter to a minor,
5. without the consent of a parent, guardian, custodian of the minor, or the person with whom the child resided the majority of the time pursuant to a court order allocating parental responsibilities, and
6. intentionally,
7. failed to release the minor to a law enforcement officer after being requested to do so by the officer.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harboring a minor (failing to release).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harboring a minor (failing to release).

### COMMENT

1. See § 18-6-601(1)(a)(I), C.R.S. 2019.
2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”).
3. Although section 18-6-601 does not define the term “minor,” sec-

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tion 2-4-401, C.R.S. 2019, provides that “[t]he following definitions apply to every statute, unless the context otherwise requires,” and it defines “minor” in subsection (6) as “any person who has not attained the age of twenty-one years.” *But see* People v. Salazar, 920 P.2d 893, 897–98 (Colo. App. 1996) (holding, under an earlier version of this statute codifying the offense of “harboring a runaway child,” that the trial court did not err “by defining ‘child’ as a person less than 18 years of age,” and observing that a survey of the Children’s Code and “criminal statutes shows that ‘minor’ is consistently defined as a person under the age of 18”).

**6-6:02**

### **Harboring a Minor (Failing to Disclose Location)**

**The elements of the crime of harboring a minor (failing to disclose location) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. provided shelter to a minor,**
- 5. without the consent of a parent, guardian, custodian of the minor, or the person with whom the child resided the majority of the time pursuant to a court order allocating parental responsibilities, and**
- 6. intentionally,**
- 7. failed to disclose the location of the minor to a law enforcement officer when requested to do so, and**
- 8. the defendant knew the location of the minor and had either taken the minor to that location or had assisted the minor in reaching that location.**
- [9. and that the defendant’s conduct was not**

legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harboring a minor (failing to disclose location).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harboring a minor (failing to disclose location).

#### COMMENT

1. See § 18-6-601(1)(a)(II), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”).

3. Although section 18-6-601 does not define the term “minor,” section 2-4-401, C.R.S. 2019, provides that “[t]he following definitions apply to every statute, unless the context otherwise requires,” and it defines “minor” in subsection (6) as “any person who has not attained the age of twenty-one years.” *But see* People v. Salazar, 920 P.2d 893, 897–98 (Colo. App. 1996) (holding, under an earlier version of this statute codifying the offense of “harboring a runaway child,” that the trial court did not err “by defining ‘child’ as a person less than 18 years of age,” and observing that a survey of the Children’s Code and “criminal statutes shows that ‘minor’ is consistently defined as a person under the age of 18”).

#### 6-6:03

#### Harboring a Minor (Obstructing)

The elements of the crime of harboring a minor (obstructing) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,



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4. provided shelter to a minor,
  5. without the consent of a parent, guardian, custodian of the minor, or the person with whom the child resided the majority of the time pursuant to a court order allocating parental responsibilities, and
  6. intentionally,
  7. obstructed a law enforcement officer from taking the minor into custody.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harboring a minor (obstructing).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harboring a minor (obstructing).

**COMMENT**

1. See § 18-6-601(1)(a)(III), C.R.S. 2019.
2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”).
3. Although section 18-6-601 does not define the term “minor,” section 2-4-401, C.R.S. 2019, provides that “[t]he following definitions apply to every statute, unless the context otherwise requires,” and it defines “minor” in subsection (6) as “any person who has not attained the age of twenty-one years.” *But see* People v. Salazar, 920 P.2d 893, 897–98 (Colo. App. 1996) (holding, under an earlier version of this statute codifying the offense of “harboring a runaway child,” that the trial court did not err “by defining ‘child’ as a person less than 18 years of age,” and observing that a survey of the Children’s Code and “criminal statutes shows that ‘minor’ is consistently defined as a person under the age of 18”).

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4. The term “obstructed” is not defined by statute. *See Black’s Law Dictionary* 1246 (10th ed. 2014) (defining “obstruct” as “[t]o make difficult or impossible; to keep from happening; hinder”).

6-6:04

### Harboring a Minor (Assisting)

The elements of the crime of harboring a minor (assisting) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. provided shelter to a minor,
5. without the consent of a parent, guardian, custodian of the minor, or the person with whom the child resided the majority of the time pursuant to a court order allocating parental responsibilities, and
6. intentionally,
7. assisted the minor in avoiding or attempting to avoid the custody of a law enforcement officer.
- [8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harboring a minor (assisting).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you

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**should find the defendant not guilty of harboring a minor (assisting).**

### COMMENT

1. See § 18-6-601(1)(a)(IV), C.R.S. 2019.
2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”).
3. Although section 18-6-601 does not define the term “minor,” section 2-4-401, C.R.S. 2019, provides that “[t]he following definitions apply to every statute, unless the context otherwise requires,” and it defines “minor” in subsection (6) as “any person who has not attained the age of twenty-one years.” *But see* People v. Salazar, 920 P.2d 893, 897–98 (Colo. App. 1996) (holding, under an earlier version of this statute codifying the offense of “harboring a runaway child,” that the trial court did not err “by defining ‘child’ as a person less than 18 years of age,” and observing that a survey of the Children’s Code and “criminal statutes shows that ‘minor’ is consistently defined as a person under the age of 18”).
4. In the absence of case law on point, the Committee takes no position on whether the word “attempting” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

**6-6:05**

### **Harboring a Minor (Failing to Notify)**

**The elements of the crime of harboring a minor (failing to notify) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. provided shelter to a minor,
5. without the consent of a parent, guardian, custodian of the minor, or the person with whom



## HARBORING A MINOR

the child resided the majority of the time pursuant to a court order allocating parental responsibilities, and

6. intentionally,
7. failed to notify, within twenty-four hours after shelter had been provided,
8. the parent, guardian, custodian of the minor, the person with whom the child resided the majority of the time pursuant to a court order allocating parental responsibilities, or a law enforcement officer that the minor was being sheltered.

[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harboring a minor (failing to notify).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harboring a minor (failing to notify).

### COMMENT

1. See § 18-6-601(1)(a)(V), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”).

3. Although section 18-6-601 does not define the term “minor,” section 2-4-401, C.R.S. 2019, provides that “[t]he following definitions apply to every statute, unless the context otherwise requires,” and it defines “minor” in subsection (6) as “any person who has not attained the age of twenty-one years.” *But see* People v. Salazar, 920 P.2d 893, 897–98 (Colo. App. 1996) (holding, under an earlier version of this statute codifying the offense of “harboring a runaway child,” that the trial

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court did not err “by defining ‘child’ as a person less than 18 years of age,” and observing that a survey of the Children’s Code and “criminal statutes shows that ‘minor’ is consistently defined as a person under the age of 18”).

### **CHAPTER 6-7**

## **CONTRIBUTING TO DELINQUENCY**

**6-7:01**

### **Contributing to the Delinquency of a Minor**

**The elements of the crime of contributing to the delinquency of a minor are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly induced, aided, or encouraged another to violate [insert a reference to the federal or state law, municipal or county ordinance, or court order], and**
- 4. the person who was induced, aided, or encouraged by the defendant was under the age of eighteen years.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of contributing to the delinquency of a minor.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you**

## CONTRIBUTING TO DELINQUENCY

**should find the defendant not guilty of contributing to the delinquency of a minor.**

### COMMENT

1. See § 18-6-701(1), C.R.S. 2019.

2. If the defendant is not separately charged with violating the referenced law, ordinance, or court order, draft a separate instruction to define it (or include the appropriate elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof). Place the instruction defining the referenced law, ordinance, or court order after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining any relevant terms and theories of criminal liability for the referenced law, ordinance, or court order.

3. In *Gorman v. People*, 19 P.3d 662, 665–67 (Colo. 2000), the supreme court concluded “that the culpable mental state of knowingly applies to the *act* of contributing to the delinquency,” but not to the age element. As the court explained, “[i]n order to be convicted of the offense of contributing to the delinquency of a minor, a person must know that he or she is inducing, aiding or encouraging *someone* to violate a ‘federal or state law,’ a ‘municipal or county ordinance,’ or a ‘court order.’” *Id.* at 665 (emphasis added).

4. See § 18-1-503.5(1), C.R.S. 2019 (“If the criminality of conduct depends on a child being younger than eighteen years of age and the child was in fact at least fifteen years of age, it shall be an affirmative defense that the defendant reasonably believed the child to be eighteen years of age or older”); *Gorman v. People*, 19 P.3d 662, 667–69 (Colo. 2000) (although the culpable mental state of “knowingly” does not apply to the age element of the crime of contributing to the delinquency of a minor, the affirmative defense of section 18-3-406 (now section 18-1-503.5) is applicable to the offense); Instruction H:36 (defining the affirmative defense in section 18-1-503.5(1)).

5. See *People v. Miller*, 830 P.2d 1092, 1093–94 (Colo. App. 1991) (section 18-6-701(1) “does not require that the minor be charged or convicted of a crime nor does it require the minor to be over the age of ten”).



**CHAPTER 6-8**

**DOMESTIC VIOLENCE**

**6-8:01.INT**

**Triggering Misdemeanor Offense of Domestic Violence—  
Interrogatory (Habitual Domestic Violence Offender)**

If you find the defendant not guilty of [insert name of misdemeanor offense(s)], you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of [insert name of misdemeanor offense(s)], you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the offense[s] of [insert name of misdemeanor offense(s)], of which you found the defendant guilty, include an act of domestic violence? (Answer “Yes” or “No”)

The offense[s] of [insert name of misdemeanor offense(s)], of which you found the defendant guilty, included an act of domestic violence only if:

1. you determine, as a matter of fact, that [it] [they] included,
- [2. an act or threatened act of violence,
3. upon a person with whom the actor was or had been involved in an intimate relationship.]
- [2. any other crime or municipal ordinance violation,
3. against a person, or against property, including an animal,

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4. when used as a method of coercion, control, punishment, intimidation, or revenge,
5. directed against a person with whom the actor was or had been involved in an intimate relationship.]

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-6-801(7), C.R.S. 2019 (habitual domestic violence offender sentence enhancement elevates any qualifying misdemeanor offense to a class five felony).

2. See Instruction F:108 (defining the term “domestic violence” pursuant to section 18-6-800.3(1), with reference to an “intimate relationship” (a term that is defined in section 18-6-800.3(2), C.R.S. 2019, and Instruction F:187)); *see, e.g.*, Instruction E:28 (special verdict form).

3. Section 18-6-801(7)(a) provides for an escalation from a misdemeanor to a class 5 felony if two factors are present: (1) the present misdemeanor offense “includes an act of domestic violence”; and (2) the defendant “has been previously convicted of three or more prior offenses that included an act of domestic violence and that were separately brought and tried and arising out of separate criminal episodes.” The first factor must be submitted to the jury. See § 18-6-801(7)(c) (“The trier of fact shall determine whether an offense charged includes an act of domestic violence.”). As to the second factor, the court should conduct a bifurcated trial to allow the jury to determine whether the defendant’s prior convictions included an act of domestic violence, unless a jury had already so determined (or the defendant had so admitted) during the prior proceedings. See § 18-6-801(7)(d). In the course of this bifurcated trial, the court should issue a modified version of this interrogatory for each prior offense. See Instruction 6-8:01.5.INT.



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Furthermore, the Committee notes that, unlike the general statute for habitual sentencing proceedings, the domestic violence statute does not explicitly state that *the judge* (rather than the jury) shall determine that the defendant in the present trial is the same defendant who suffered the prior convictions. Compare § 18-1.3-803(4) C.R.S. 2019 (specifying that, if the defendant denies being previously convicted as alleged, “*the trial judge . . . shall proceed to try the issues of whether the defendant has been previously convicted*” (emphasis added)), with § 18-6-801(7)(d) (simply providing for sentencing determinations pertaining to “any prior conviction” allegedly involving an act of domestic violence). Nevertheless, the Committee concludes that, by implication, the domestic violence statute similarly leaves to the court to determine whether the present defendant has suffered prior convictions. That is, the statute does not require a jury to determine whether the defendant is the same person who was previously convicted; rather, it requires a jury to determine whether those prior convictions included an act of domestic violence. + See *People v. Jaso*, 2014 COA 131, ¶ 21, 347 P.3d 1174, 1178–79 (holding that, where the jury’s guilty verdict on violation of a protection order “did not reflect a finding of ‘coercion, control, punishment, intimidation, or revenge,’ because the necessary elements of the charged crime . . . required the jury to find only that defendant contacted [the victim] knowing there was a protection order in place,” the trial court “engaged in constitutionally impermissible judicial fact-finding” when it found that the defendant’s contact with the victim “was made for the purpose of coercion or control”).

4. In 2016, the Committee modified this instruction and Comment 3 to reflect a legislative amendment, and it deleted the prior Comment 4. See Ch. 106, sec. 1, § 18-6-801(7), 2016 Colo. Sess. Laws 306, 306 to 07.

5. + In 2019, the Committee added the citation to *Jaso* in Comment 3.

### 6-8:01.5.INT

#### **Prior Offenses of Domestic Violence—Interrogatory (Habitual Domestic Violence Offender)**

**In addition to the offenses that you have already considered, the charges in this case allege that the defendant was previously convicted of [insert name of prior offense], and that this offense included an act of domestic violence. The court has already determined that the defendant was in fact convicted of [insert prior offense]. Now, you must decide whether that offense included an act of domestic violence. To do so, you should answer the following verdict question on the verdict form:**



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Did the offense of [insert prior offense], of which the defendant was previously convicted, include an act of domestic violence? (Answer “Yes” or “No”)

The offense of [insert prior offense], of which the defendant was previously convicted, included an act of domestic violence only if:

1. you determine, as a matter of fact, that it included,

[2. an act or threatened act of violence,

3. upon a person with whom the actor was or had been involved in an intimate relationship.]

[2. any other crime or municipal ordinance violation,

3. against a person, or against property, including an animal,

4. when used as a method of coercion, control, punishment, intimidation, or revenge,

5. directed against a person with whom the actor was or had been involved in an intimate relationship.]

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have

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**the foreperson sign the designated line of the verdict form.**

### COMMENT

1. *See* § 18-6-801(7), C.R.S. 2019 (habitual domestic violence offender sentence enhancement elevates any qualifying misdemeanor offense to a class five felony).

2. *See* Instruction F:108 (defining the term “domestic violence” pursuant to section 18-6-800.3(1), with reference to an “intimate relationship” (a term that is defined in section 18-6-800.3(2), C.R.S. 2019, and Instruction F:187)); *see, e.g.*, Instruction E:28 (special verdict form).

3. Section 18-6-801(7)(a) elevates a misdemeanor offense that included an act of domestic violence to a class 5 felony if the defendant had previously been convicted of three or more prior offenses that included acts of domestic violence. Subsection (d) requires the jury to make this determination, absent specific circumstances. *See* Instruction 6-8:01.INT, Comment 3. Thus, this interrogatory is to be given in the second phase of a bifurcated trial as contemplated in section 18-6-801(7)(d). Additionally, the court should give separate interrogatories for each prior conviction where the existence of an act of domestic violence is in dispute. Furthermore, in the event that the prior convictions involve the same type of offense, the court should be sure to differentiate the prior convictions in the individual interrogatories.

4. In 2016, the Committee added this instruction pursuant to new legislation. *See* Ch. 106, sec. 1, § 18-6-801(7), 2016 Colo. Sess. Laws 306, 306 to 07.

### 6-8:02

#### **Violation of a Protection Order (Prohibited Conduct)**

**The elements of the crime of violation of a protection order (prohibited conduct) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. after having been personally served with a protection order that identified the defendant as a restrained person, or otherwise having acquired from the court or law enforcement personnel**

actual knowledge of the contents of a protection order that identified the defendant as a restrained person,

4. knowingly,

5. contacted, harassed, injured, intimidated, molested, threatened, or touched the protected person or protected property (including an animal) identified in the protection order; or entered or remained on premises or came within a specified distance of the protected person, protected property (including an animal), or premises; or violated any other provision of the protection order designed to protect the protected person from imminent danger to life or health; and

6. the defendant's conduct was prohibited by the protection order.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of violation of a protection order (prohibited conduct).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of violation of a protection order (prohibited conduct).

#### COMMENT

1. See § 18-6-803.5(1)(a), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:293.5 (defining “protected person”); Instruction F:294 (defining “protection order”); Instruction F:319 (defining “restrained person”).



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3. In *People v. Coleby*, 34 P.3d 422, 424 (Colo. 2001), the supreme court interpreted an earlier version of the statute and held as follows:

Since the second portion of the statute requires a knowing violation, which is satisfied either implicitly by personal service of the restraining order or explicitly by actual knowledge of the contents of the order, section 18-1-503(4) requires that the mental state of knowingly apply to every element of the crime, “unless an intent to limit its application clearly appears.” An examination of the legislative history underlying section 18-6-803.5 reveals no intent on the part of the General Assembly to limit the application of the culpable mental state of “knowingly” to only one element of the offense. Moreover, the words the General Assembly chose to describe the conduct portion of the offense in section 18-6-803.5 evidence no clear intent to limit the application of the knowledge requirement. Thus, the mental state of “knowingly” applies not only to the second prong of the statute, but also to the first, conduct, prong.

Nothing in the statutory amendments after *Coleby* suggests that the holding in that case has been legislatively overruled. Accordingly, the above instruction applies the mens rea of “knowingly” to the prohibited conduct.

4. It is not necessary to submit an interrogatory asking the jury to make a finding with regard to the sentence enhancement factors in section 18-6-803.5(2)(a), C.R.S. 2019 (repeat offender; violation of restraining order issued pursuant to section 18-1-1001). These issues are matters of law for the court to determine.

5. *See Hotsenpiller v. Morris*, 2017 COA 95, ¶ 48, — P.3d — (holding that “consent of victim” is not a valid affirmative defense to violation of a protection order because “[a] protected person simply cannot ‘consent,’ under section 18-1-505, to another person’s violation of a court order”).

6. + *See People in Interest of L.C.*, 2017 COA 82, ¶ 37, — P.3d — (“By using the disjunctive ‘or’ in section 18-6-803.5(1)(a), the General Assembly intended to describe alternative ways of committing the offense of violation of a protective order. Thus, violation of a protective order does not in every instance require proof that the accused contacted the protected person.” (citations omitted)).

7. In 2017, the Committee added Comment 5.

8. + In 2019, the Committee added Comment 6.

**Violation of a Protection Order (Locating)**

The elements of the crime of violation of a protection order (locating) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. after having been personally served with a protection order that identified the defendant as a restrained person, or otherwise having acquired from the court or law enforcement personnel actual knowledge of the contents of a protection order that identified the defendant as a restrained person,
4. knowingly,
5. hired, employed, or otherwise contracted with another person to locate or assist in the location of the protected person.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of violation of a protection order (locating).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of violation of a protection order (locating).

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### COMMENT

1. *See* § 18-6-803.5(1)(b), C.R.S. 2019.
2. *See* Instruction F:14 (defining “assist”); Instruction F:195 (defining “knowingly”); Instruction F:293.5 (defining “protected person”); Instruction F:294 (defining “protection order”); Instruction F:319 (defining “restrained person”).
3. Section 18-6-803.5(1)(b) excepts from criminal liability conduct permitted pursuant to section 18-13-126(1)(b). *See* Instruction H:49 (affirmative defense of “locating a protected person—lawful purpose”).
4. *See* Instruction 6-8:02, Comment 3 (discussing *People v. Coleby*, 34 P.3d 422, 424 (Colo. 2001), and the application of the mens rea of “knowingly” to the prohibited conduct).
5. It is not necessary to submit an interrogatory asking the jury to make a finding with regard to the sentence enhancement factors in section 18-6-803.5(2)(a), C.R.S. 2019 (repeat offender; violation of restraining order issued pursuant to section 18-1-1001). These issues are matters of law for the court to determine.

### 6-8:04

#### **Violation of a Protection Order (Firearms or Ammunition)**

**The elements of the crime of violation of a protection order (firearms or ammunition) are:**

1. **That the defendant,**
2. **in the State of Colorado, at or about the date and place charged,**
3. **after having been personally served with a protection order that identified the defendant as a restrained person, or otherwise having acquired from the court or law enforcement personnel actual knowledge of the contents of a protection order that identified the defendant as a restrained person,**
4. **knowingly,**
5. **violated a civil protection order,**



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**6. by possessing or attempting to purchase or receive a firearm or ammunition while the protection order was in effect; or failing to timely file a receipt or written statement with the court as required by law.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of violation of a protection order (firearms or ammunition).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of violation of a protection order (firearms or ammunition).**

### COMMENT

1. See § 18-6-803.5(1)(c), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”); Instruction F:294 (defining “protection order”); Instruction F:319 (defining “restrained person”).

3. See Instruction 6-8:02, Comment 3 (discussing *People v. Coleby*, 34 P.3d 422, 424 (Colo. 2001), and the application of the mens rea of “knowingly” to the prohibited conduct).

4. The question of whether a civil protection order was issued “pursuant to section 13-14-105.5, C.R.S., or pursuant to section 18-1-1001(9)” is a matter of law for the court to determine.

5. In cases under section 18-6-803.5(1)(c)(II), the court should draft a special instruction, tailored to the evidence, explaining the relevant filing requirement(s) of section 13-14-105.5(9), section 18-1-1001(9)(i), or section 18-6-801(8)(i).

6. It is not necessary to submit an interrogatory asking the jury to make a finding with regard to the sentence enhancement factors in section 18-6-803.5(2)(a), C.R.S. 2019 (repeat offender; violation of restrain-

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ing order issued pursuant to section 18-1-1001). These issues are matters of law for the court to determine.

7. In the absence of case law on point, the Committee takes no position on whether the word “attempting” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

8. In 2015, the Committee added Comment 7.

### **CHAPTER 6.5**

## **CRIMES AGAINST AT-RISK ADULTS AND JUVENILES**

### **6.5:01**

#### **Criminal Negligence Resulting in the Death of an At-Risk Person**

The elements of criminal negligence resulting in the death of an at-risk person are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. engaged in conduct amounting to criminal negligence,
4. that resulted in the death,
5. of an at-risk person.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-

**dant guilty of criminal negligence resulting in the death of an at-risk person.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal negligence resulting in the death of an at-risk person.**

**COMMENT**

1. *See* § 18-6.5-103(2)(a), C.R.S. 2019.

2. *See* Instruction F:26.5 (defining “at-risk person”); Instruction F:66 (defining “conduct”); Instruction F:79 (defining “criminal negligence”).

3. *See* *People v. Lovato*, 179 P.3d 208, 211 (Colo. App. 2007) (section 18-6.5-103(2) creates a separate substantive offense).

4. *See* *People v. Davis*, 935 P.2d 79, 86 (Colo. App. 1996) (“Examining §§ 18-6.5-102 and 18-6.5-103 . . . we find no indication that the General Assembly intended to require that a defendant act with knowledge of the age of a victim in order to be charged with a crime against an at-risk adult. The relevant statutes contain no mens rea element. Nor do they provide a defense for those defendants who might make a reasonable mistake as to their victims’ ages.”).

5. *See also* *People v. Madison*, 176 P.3d 793, 805 (Colo. App. 2007) (“‘Conduct’ is defined as ‘an act or omission and its accompanying state of mind.’ Section 18-1-501(2) (emphasis supplied). Therefore, § 18-6.5-103(2)(b) does not require the commission of an act to trigger its requirements.”).

6. In 2016, the Committee modified this instruction, pursuant to a legislative amendment, by replacing the bracketed alternatives of “adult” and “juvenile” with the word “person.” *See* Ch. 172, sec. 3, § 18-6.5-103(2)(a), 2016 Colo. Sess. Laws 545, 547.

**6.5:02**

**Criminal Negligence Resulting in Serious Bodily Injury to an At-Risk Person**

**The elements of criminal negligence resulting in serious bodily injury to an at-risk person are:**

**1. That the defendant,**



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2. in the State of Colorado, at or about the date and place charged,

3. engaged in conduct amounting to criminal negligence,

4. that resulted in serious bodily injury,

5. to an at-risk person.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal negligence resulting in serious bodily injury to an at-risk person.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal negligence resulting in serious bodily injury to an at-risk person.

COMMENT

1. See § 18-6.5-103(2)(b), C.R.S. 2019.

2. See Instruction F:26.5 (defining “at-risk person”); Instruction F:66 (defining “conduct”); Instruction F:79 (defining “criminal negligence”); Instruction F:332 (defining “serious bodily injury”).

3. See *People v. Madison*, 176 P.3d 793, 805 (Colo. App. 2007) (“‘Conduct’ is defined as ‘an act or omission and its accompanying state of mind.’ Section 18-1-501(2) (emphasis supplied). Therefore, § 18-6.5-103(2)(b) does not require the commission of an act to trigger its requirements.”).

4. See *People v. Lovato*, 179 P.3d 208, 211 (Colo. App. 2007) (section 18-6.5-103(2) creates a separate substantive offense).

5. See *People v. Davis*, 935 P.2d 79, 86 (Colo. App. 1996) (“Examining §§ 18-6.5-102 and 18-6.5-103 . . . we find no indication that the

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General Assembly intended to require that a defendant act with knowledge of the age of a victim in order to be charged with a crime against an at-risk adult. The relevant statutes contain no mens rea element. Nor do they provide a defense for those defendants who might make a reasonable mistake as to their victims' ages.”).

6. In 2016, the Committee modified this instruction, pursuant to a legislative amendment, by replacing the bracketed alternatives of “adult” and “juvenile” with the word “person.” See Ch. 172, sec. 3, § 18-6.5-103(2)(b), 2016 Colo. Sess. Laws 545, 548.

### **6.5:03**

#### **Criminal Negligence Resulting in Bodily Injury to an At-Risk Person**

**The elements of criminal negligence resulting in bodily injury to an at-risk person are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. engaged in conduct amounting to criminal negligence,**
- 4. that resulted in bodily injury,**
- 5. to an at-risk person.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal negligence resulting in bodily injury to an at-risk person.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you**



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**should find the defendant not guilty of criminal negligence resulting in bodily injury to an at-risk person.**

### COMMENT

1. *See* § 18-6.5-103(2)(c), C.R.S. 2019.

2. *See* Instruction F:26.5 (defining “at-risk person”); Instruction F:36 (defining “bodily injury”); Instruction F:66 (defining “conduct”); Instruction F:79 (defining “criminal negligence”).

3. *See* *People v. Lovato*, 179 P.3d 208, 211 (Colo. App. 2007) (section 18-6.5-103(2) creates a separate substantive offense).

4. *See* *People v. Davis*, 935 P.2d 79, 86 (Colo. App. 1996) (“Examining §§ 18-6.5-102 and 18-6.5-103 . . . we find no indication that the General Assembly intended to require that a defendant act with knowledge of the age of a victim in order to be charged with a crime against an at-risk adult. The relevant statutes contain no mens rea element. Nor do they provide a defense for those defendants who might make a reasonable mistake as to their victims’ ages.”).

5. *See also* *People v. Madison*, 176 P.3d 793, 805 (Colo. App. 2007) (“‘Conduct’ is defined as ‘an act or omission and its accompanying state of mind.’ Section 18-1-501(2) (emphasis supplied). Therefore, § 18-6.5-103(2)(b) does not require the commission of an act to trigger its requirements.”).

6. In 2016, the Committee modified this instruction, pursuant to a legislative amendment, by replacing the bracketed alternatives of “adult” and “juvenile” with the word “person.” *See* Ch. 172, sec. 3, § 18-6.5-103(2)(c), 2016 Colo. Sess. Laws 545, 548.

### 6.5:04

#### **Caretaker Neglect or Endangerment of an At-Risk Person**

**The elements of the crime of caretaker neglect or endangerment of an at-risk person are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. committed caretaker neglect against, or acted



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in a manner likely to be injurious to the physical or mental welfare of,

5. an at-risk person.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of caretaker neglect or endangerment of an at-risk person.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of caretaker neglect or endangerment of an at-risk person.

### COMMENT

1. + *See* § 18-6.5-103(6)(a), C.R.S. 2019.

2. *See* Instruction F:26.5 (defining “at-risk person”); Instruction F:44 (defining “caretaker”); Instruction F:45 (defining “caretaker neglect”); Instruction F:195 (defining “knowingly”).

3. In 2016, the Committee deleted the bracketed alternatives of “adult,” “elder,” and “juvenile” and replaced them with “person” pursuant to a legislative amendment, and it deleted the previous Comment 3. *See* Ch. 172, sec. 3, § 18-6.5-103(6), 2016 Colo. Sess. Laws 545, 549.

4. + In 2019, the Committee updated the statutory citation in Comment 1 pursuant to a legislative amendment. *See* Ch. 365, sec. 3, § 18-6.5-103(6), 2019 Colo. Sess. Laws 3359, 3360.

### + 6.5:04.5

## Unlawful Abandonment of an At-Risk Person

The elements of the crime of unlawful abandonment of an at-risk person are:

1. That the defendant,

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2. in the State of Colorado, at or about the date and place charged,
3. intentionally and unreasonably,
4. deserted an at-risk person,
5. in a manner that endangered the safety of that person.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful abandonment of an at-risk person.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful abandonment of an at-risk person.

**COMMENT**

1. See §§ 18-6.5-102(14), 18-6.5-103(6)(b), C.R.S. 2019.

2. See Instruction F:26.5 (defining “at-risk person”); Instruction F:185 (defining “intentionally”); *see also* Instruction F:379.5 (defining “unlawful abandonment”).

3. Section 18-6.5-103(6)(b) criminalizes “unlawfully abandon[ing] an at-risk person.” In turn, section 18-6.5-102(14) defines “unlawful abandonment” as “the intentional and unreasonable desertion of an at-risk person in a manner that endangers the safety of that person.” The Committee has thus incorporated that definitional statute into its elements of the crime. Furthermore, the Committee notes that the statute does not define the terms “unreasonable” or “desertion.”

4. + The Committee added this instruction in 2019 pursuant to new legislation. See Ch. 365, secs. 2–3, §§ 18-6.5-102(14), 18-6.5-103(6)(b), 2019 Colo. Sess. Laws 3359, 3359–60.

6.5:05

### **Criminal Exploitation of an At-Risk Person**

**The elements of the crime of criminal exploitation of an at-risk person are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. used deception, harassment, intimidation, or undue influence,**
- 5. to permanently or temporarily deprive an at-risk person of the use, benefit, or possession of any thing of value.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal exploitation of an at-risk person.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal exploitation of an at-risk person.**

#### **COMMENT**

1. See § 18-6.5-103(7.5)(a), C.R.S. 2019.

2. See Instruction F:26.5 (defining “at-risk person”); Instruction F:30 (defining “benefit”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”); Instruction F:379 (defining



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“undue influence”); *see also* Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment).

3. In 2016, the Committee replaced the word “elder” with “person” pursuant to a legislative amendment. *See* Ch. 172, sec. 3, § 18-6.5-103(7.5)(a), 2016 Colo. Sess. Laws 545, 549.

### 6.5:06.INT

#### **Criminal Exploitation of an At-Risk Person—Interrogatory (Value)**

If you find the defendant not guilty of criminal exploitation of an at-risk person, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of criminal exploitation of an at-risk person, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question[s] on the verdict form.

1. Was the value of the thing involved in the defendant’s criminal exploitation of an at-risk person five hundred dollars or more? (Answer “Yes” or “No”)

The prosecution has the burden to prove the value of the thing involved beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

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### COMMENT

1. *See* § 18-6.5-103(7.5)(b), C.R.S. 2019.

2. *See* Instruction F:26.5 (defining “at-risk person”); *see, e.g.*, Instruction E:28 (special verdict form).

3. In 2016, the Committee replaced the word “elder” with “person” pursuant to a legislative amendment, and it added the cross-reference to Instruction 26.5 in Comment 2. *See* Ch. 172, sec. 3, § 18-6.5-103(7.5)(b), 2016 Colo. Sess. Laws 545, 549.

### + 6.5:06.4

#### **False Imprisonment of an At-Risk Person (Locked Room)**

The elements of the crime of false imprisonment of an at-risk person (locked room) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. without proper legal authority,
  5. confined or detained an at-risk person in a locked or barricaded room or other space, and
  6. such confinement or detention was part of a continued pattern of cruel punishment or unreasonable isolation or confinement of the at-risk person.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false imprisonment of an at-risk person (locked room).

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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false imprisonment of an at-risk person (locked room).

### COMMENT

1. See § 18-6.5-103(9)(a)(I), C.R.S. 2019.
2. See Instruction F:26.5 (defining “at-risk person”); Instruction F:195 (defining “knowingly”).
3. + The Committee added this instruction in 2019 pursuant to new legislation. See Ch. 365, sec. 3, § 18-6.5-103(9)(a)(I), 2019 Colo. Sess. Laws 3359, 3360.

### + 6.5:06.5

#### False Imprisonment of an At-Risk Person (Physically Restraining)

The elements of the crime of false imprisonment of an at-risk person (physically restraining) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unreasonably,
4. without proper legal authority,
5. confined or detained an at-risk person,
6. by tying, caging, chaining, or otherwise using similar physical restraints to restrict the at-risk person’s freedom of movement.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide



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the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false imprisonment of an at-risk person (physically restraining).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false imprisonment of an at-risk person (physically restraining).

### COMMENT

1. *See* § 18-6.5-103(9)(a)(II), C.R.S. 2019.

2. *See* Instruction F:26.5 (defining “at-risk person”); Instruction F:195 (defining “knowingly”).

3. *See* Instruction H:49.3 (affirmative defense of “promoted welfare”).

4. + The Committee added this instruction in 2019 pursuant to new legislation. *See* Ch. 365, sec. 3, § 18-6.5-103(9)(a)(II), 2019 Colo. Sess. Laws 3359, 3360.

### + 6.5:06.6

#### False Imprisonment of an At-Risk Person (Force or Threats)

The elements of the crime of false imprisonment of an at-risk person (force or threats) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unreasonably,
4. without proper legal authority,
5. confined or detained an at-risk person,
6. by means of force, threats, or intimidation

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**designed to restrict the at-risk person's freedom of movement.**

- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false imprisonment of an at-risk person (force or threats).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false imprisonment of an at-risk person (force or threats).**

**COMMENT**

1. *See* § 18-6.5-103(9)(a)(III), C.R.S. 2019.
2. *See* Instruction F:26.5 (defining “at-risk person”); Instruction F:195 (defining “knowingly”).
3. + The Committee added this instruction in 2019 pursuant to new legislation. *See* Ch. 365, sec. 3, § 18-6.5-103(9)(a)(III), 2019 Colo. Sess. Laws 3359, 3360.

**6.5:07**

**Mistreatment of At-Risk Elder or At-Risk Adult With Idd  
(Failure to Report)**

**The elements of the crime of mistreatment of at-risk elder or at-risk adult with IDD (failure to report) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

## CRIMES AGAINST AT-RISK ADULTS AND JUVENILES

3. was a[n] [insert relevant status from section 18-6.5-108(1)(b), C.R.S. 2019], and

4. observed the mistreatment of an at-risk elder or an at-risk adult with IDD, or had reasonable cause to believe that an at-risk elder or an at-risk adult with IDD had been mistreated or was at imminent risk of mistreatment, and

5. willfully,

6. failed to report such fact to a law enforcement agency within twenty-four hours after making the observation or discovery.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of mistreatment of at-risk elder or at-risk adult with IDD (failure to report).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of mistreatment of at-risk elder or at-risk adult with IDD (failure to report).

### COMMENT

1. See § 18-6.5-108(1)(a) to (c), C.R.S. 2019.

2. See Instruction F:24.5 (defining “at-risk adult with IDD”); Instruction F:25 (defining “at-risk elder”); Instruction F:195 (defining “willfully”); Instruction F:230.5 (defining “mistreated or mistreatment” (at-risk persons)).

3. Section 18-6.5-108(1)(d) provides for an exemption from liability where the person knew that another person had already reported the observed mistreatment. However, the Committee has not drafted a model affirmative defense instruction.



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4. The Committee added this instruction in 2016.

**6.5:08**

**Mistreatment of At-Risk Elder or At-Risk Adult With Idd  
(False Report)**

**The elements of the crime of mistreatment of at-risk elder or at-risk adult with IDD (false report) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. made a false report of mistreatment of an at-risk elder or an at-risk adult with IDD,**
- 5. to a law enforcement agency.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of mistreatment of at-risk elder or at-risk adult with IDD (false report).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of mistreatment of at-risk elder or at-risk adult with IDD (false report).**

**COMMENT**

1. See § 18-6.5-108(4), C.R.S. 2019.
2. See Instruction F:24.5 (defining “at-risk adult with IDD”); Instruc-

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tion F:25 (defining “at-risk elder”); Instruction F:195 (defining “knowingly”); Instruction F:230.5 (defining “mistreatment” (at-risk persons)).

3. The Committee added this instruction in 2016.

## **CHAPTER 7-1**

## **OBSCENITY**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2016.

### **7-1:01**

#### **Wholesale Promotion of Obscenity**

**The elements of the crime of wholesale promotion of obscenity are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing its content and character,
4. wholesale promoted or possessed with intent to wholesale promote,
5. any obscene material.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of wholesale promotion of obscenity.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**

## COLORADO JURY INSTRUCTIONS—CRIMINAL

**of the elements beyond a reasonable doubt, you should find the defendant not guilty of wholesale promotion of obscenity.**

### COMMENT

1. *See* § 18-7-102(1)(a), C.R.S. 2019.
2. *See* Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:219.3 (defining “material”); Instruction F:246.2 (defining “obscene” (obscenity)); Instruction F:281 (defining “possession”); Instruction F:391.8 (defining “wholesale promote”).
3. *See* *People v. Ford*, 773 P.2d 1059, 1068 (Colo. 1989) (“Section 18-7-102 imposes liability on a person who promotes obscene material if he knows its contents and character. Thus, the statute requires that a particular defendant act ‘knowingly,’ which is a clearly defined mental state. The defendant need not know that the material is ‘obscene.’”).
4. Sections 18-1-702(5), (6), C.R.S. 2019, provide exemptions from liability in circumstances involving law enforcement activities and conduct occurring in a person’s residence. However, the Committee has not drafted model affirmative defense instructions.
5. *See* Instruction 7-1:05.SP, Comment 3 (taking no position on whether the permissible inference of section 18-7-102(4) applies to “wholesale” promotion).

### 7-1:02

#### **Wholesale Promotion of Obscenity to a Minor**

**The elements of the crime of wholesale promotion of obscenity to a minor are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing its content and character,
4. wholesale promoted to a minor or possessed with intent to wholesale promote to a minor,
5. any obscene material.
- [6. and that the defendant’s conduct was not



## OBSCENITY

**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of wholesale promotion of obscenity to a minor.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of wholesale promotion of obscenity to a minor.**

## COMMENT

1. See § 18-7-102(1.5)(a), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:219.3 (defining “material”); Instruction F:229.3 (defining “minor” (obscenity)); Instruction F:246.2 (defining “obscene” (obscenity)); Instruction F:281 (defining “possession”); Instruction F:391.8 (defining “wholesale promote”).

3. See *People v. Ford*, 773 P.2d 1059, 1068 (Colo. 1989) (“Section 18-7-102 imposes liability on a person who promotes obscene material if he knows its contents and character. Thus, the statute requires that a particular defendant act ‘knowingly,’ which is a clearly defined mental state. The defendant need not know that the material is ‘obscene.’”).

4. See Instruction 7-1:01, Comment 4 (discussing the excepting language in sections 18-7-102(5), (6)).

5. See Instruction 7-1:05.SP, Comment 3 (taking no position on whether the permissible inference of section 18-7-102(4) applies to “wholesale” promotion).

## 7-1:03

### Promotion of Obscenity

**The elements of the crime of promotion of obscenity are:**

**1. That the defendant,**

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**2. in the State of Colorado, at or about the date and place charged,**

**3. knowing its content and character,**

**[4. promoted or possessed with intent to promote any obscene material.]**

**[4. produced, presented, or directed an obscene performance or participated in a portion thereof that was obscene or that contributed to its obscenity.]**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of promotion of obscenity.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of promotion of obscenity.**

**COMMENT**

1. *See* § 18-7-102(2)(a), C.R.S. 2019.

2. *See* Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:219.3 (defining “material”); Instruction F:246.2 (defining “obscene” (obscenity)); Instruction F:281 (defining “possession”); Instruction F:287.6 (defining “promote”).

3. *See* *People v. Ford*, 773 P.2d 1059, 1068 (Colo. 1989) (“Section 18-7-102 imposes liability on a person who promotes obscene material if he knows its contents and character. Thus, the statute requires that a particular defendant act ‘knowingly,’ which is a clearly defined mental state. The defendant need not know that the material is ‘obscene.’”).

4. *See* Instruction 7-1:01, Comment 4 (discussing the excepting language in sections 18-7-102(5), (6)).

## OBSCENITY

7-1:04

### Promotion of Obscenity to a Minor

The elements of the crime of promotion of obscenity to a minor are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing its content and character,
  - [4. promoted to a minor or possessed with intent to promote to a minor any obscene material.]
  - [4. produced, presented, or directed an obscene performance involving a minor or participated in a portion thereof that was obscene or that contributed to its obscenity.]
  - [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of promotion of obscenity to a minor.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of promotion of obscenity to a minor.

## COMMENT

1. See § 18-7-102(2.5)(a), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:219.3 (defining “material”); Instruction F:229.3 (defining “minor” (obscenity)); Instruction F:246.2 (defining



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“obscene” (obscenity)); Instruction F:281 (defining “possession”); Instruction F:287.6 (defining “promote”).

3. See *People v. Ford*, 773 P.2d 1059, 1068 (Colo. 1989) (“Section 18-7-102 imposes liability on a person who promotes obscene material if he knows its contents and character. Thus, the statute requires that a particular defendant act ‘knowingly,’ which is a clearly defined mental state. The defendant need not know that the material is ‘obscene.’”).

4. See Instruction 7-1:01, Comment 4 (discussing the excepting language in sections 18-7-102(5), (6)).

### 7-1:05.SP

#### **Promotion of Obscenity—Special Instruction (Six or More Items)**

**Evidence that a person possessed six or more identical obscene materials gives rise to a permissible inference that the person possessed them with intent to promote them.**

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is warranted by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

**You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.**

#### **COMMENT**

1. See § 18-7-102(4), C.R.S. 2019.

2. See *People ex rel. Tooley v. Seven Thirty-Five E. Colfax, Inc.*, 697 P.2d 348, 362 (Colo. 1985) (“[I]t is clear that the presumption [in section 18-7-102(4)] must be classified as permissive to comply with constitutional requirements. It must be construed to allow, but not to require, the trier of fact to infer the presumed fact (intent to promote) from the proven fact (possession of six or more identical obscene materials) and, of course, the jury must be properly instructed as to this effect.”).

3. The Committee takes no position on whether this instruction ap-

## OBSCENITY

plies to the crimes of wholesale promotion of obscenity. *See* Instructions 7-1:01 and 7-1:02.

### 7-1:06

#### Posting a Private Image for Harassment

The elements of the crime of posting a private image for harassment are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was eighteen years of age or older, and
4. with the intent,
  - [5. to harass, intimidate, or coerce an identified or identifiable person eighteen years of age or older,
  6. posted or distributed through the use of social media or any website any photograph, video, or other image displaying the private intimate parts of the depicted person,]
  - [5. to harass, intimidate, or coerce an identified or identifiable person,
  6. posted or distributed through the use of social media or any website an image displaying sexual acts of the depicted person,]
  - [7. without the depicted person's consent, and]
  - [7. when the defendant knew or should have known that the depicted person had a reasonable expectation that the image would remain private, and]

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**8. the conduct resulted in serious emotional distress of the depicted person.**

**[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of posting a private image for harassment.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of posting a private image for harassment.**

### COMMENT

1. *See* § 18-7-107(1)(a), C.R.S. 2019.

2. *See* Instruction F:101.5 (defining “displaying sexual acts”); Instruction F:176.5 (defining “image”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:285.6 (defining “private intimate parts”); Instruction F:336.2 (defining “sexual acts”); Instruction F:346.5 (defining “social media”).

3. *See* Instruction H:49.5 (affirmative defense of “newsworthy event”).

4. The statute does not define “serious emotional distress.” *Cf.* *People v. Carey*, 198 P.3d 1223, 1236 (Colo. App. 2008) (holding, in the context of a stalking case, that “[b]ecause the phrase ‘serious emotional distress’ is understandable to persons of common intelligence, it was within the trial court’s discretion to refuse to instruct the jury on the definition of ‘severe emotional distress’ found in the civil jury instructions”).

5. Section 18-7-107(5), C.R.S. 2019, creates exemptions for interactive computer services, information services, and telecommunications services, as defined in Title 47 of the United States Code. However, the Committee has not drafted model affirmative defense instructions.

6. For the fifth and sixth elements, the Committee has created bracketed alternatives because it appears from the statute that (1) if the defendant posted a “photograph, video, or other image displaying the private intimate parts” of a person, such a posting is criminalized



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only if the depicted person is eighteen years of age or older, but (2) if the defendant posted “an image displaying sexual acts” of a person, such a posting is criminalized regardless of the age of the depicted person.

7. In 2018, pursuant to a legislative amendment, the Committee modified the first alternative of the fifth element; added the second bracketed alternative for the fifth and sixth elements; added cross-references to Instructions F:101.5, F:176.5, and F:336.2 in Comment 2; and added Comment 6. *See* Ch. 192, sec. 1, § 18-7-107(1)(a), 2018 Colo. Sess. Laws 1276, 1276.

### 7-1:07

#### **Posting a Private Image for Pecuniary Gain**

**The elements of the crime of posting a private image for pecuniary gain are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was eighteen years of age or older, and**
- [4. posted or distributed through social media or any website any photograph, video, or other image displaying the private intimate parts of an identified or identifiable person eighteen years of age or older,]**
- [4. posted or distributed through social media or any website an image displaying sexual acts of an identified or identifiable person,]**
- 5. with the intent,**
- 6. to obtain a pecuniary benefit from any person as a result of the posting, viewing, or removal of the private image, and**
- [7. the defendant had not obtained the depicted person's consent.]**

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**[7. the defendant knew or should have known that the depicted person had a reasonable expectation that the image would remain private.]**

**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of posting a private image for pecuniary gain.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of posting a private image for pecuniary gain.**

### COMMENT

1. See § 18-7-108(1)(a), C.R.S. 2019.

2. See Instruction F:101.5 (defining “displaying sexual acts”); Instruction F:176.5 (defining “image”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:285.6 (defining “private intimate parts”); Instruction F:336.2 (defining “sexual acts”); Instruction F:346.5 (defining “social media”).

3. See Instruction H:49.5 (affirmative defense of “newsworthy event”).

4. Section 18-7-108(5), C.R.S. 2019, creates exemptions for interactive computer services, information services, and telecommunications services, as defined in Title 47 of the United States Code. However, the Committee has not drafted model affirmative defense instructions.

5. For the fourth element, the Committee has created bracketed alternatives because it appears from the statute that (1) if the defendant posted a “photograph, video, or other image displaying the private intimate parts” of a person, such a posting is criminalized only if the depicted person is eighteen years of age or older, but (2) if the defendant posted “an image displaying sexual acts” of a person, such a posting is criminalized regardless of the age of the depicted person.

6. In 2018, pursuant to a legislative amendment, the Committee

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added the second bracketed alternative for the fourth element; added cross-references to Instructions F:101.5, F:176.5, and F:336.2 in Comment 2; and added Comment 5. *See* Ch. 192, sec. 2, § 18-7-108(1)(a), 2018 Colo. Sess. Laws 1276, 1277.

7-1:08

### Posting a Private Image by a Juvenile (Image of Another)

The elements of the [crime] [offense] of posting a private image by a juvenile (image of another) are:

1. That the [defendant] [juvenile],
2. in the State of Colorado, at or about the date and place charged,
3. while under eighteen years of age,
4. knowingly,
5. through digital or electronic means,
6. distributed, displayed, or published to the view of another person,
7. a sexually explicit image of a person other than [himself] [herself] who is at least fourteen years of age or is less than four years younger than the [defendant] [juvenile],
- [8. without the depicted person's permission.]
- [8. when the recipient did not solicit or request to be supplied with the image and suffered emotional distress.]
- [8. when he [she] knew or should have known that the depicted person had a reasonable expectation that the image would remain private.]
- [9. and that the [defendant's] [juvenile's] conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find [the defendant guilty] [that the juvenile committed the offense] of posting a private image by a juvenile (image of another).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find [the defendant not guilty] [that the juvenile did not commit the offense] of posting a private image by a juvenile (image of another).

### COMMENT

1. See § 18-7-109(1)(a), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:340.5 (defining “sexually explicit image”).

3. See Instruction H:49.8 (affirmative defense of “coerced, threatened, or intimidated”).

4. Because this offense only applies to juveniles, the Committee has added the third element, which stems from the statutory definition of “juvenile” as it applies to this offense. See § 18-7-109(8)(a).

Furthermore, the Committee recognizes that juveniles are not entitled to a trial by jury for misdemeanors or petty offenses. See § 19-2-107(2), C.R.S. 2019. Nevertheless, the Committee has created this instruction in the event that a juvenile would ever face a jury trial, either in criminal court or in juvenile court. Furthermore, the Committee has provided bracketed language throughout the instruction to match the appropriate venue. If the proceeding takes places in criminal court, the court should use the first set of brackets. If the proceeding takes place in juvenile court, the court should use the second set of brackets, which replaces several terms (i.e., “crime,” “defendant,” “guilty”) with their appropriate counterpart (i.e., “offense,” “juvenile,” “committed the offense”).

5. The Committee added this instruction in 2017 pursuant to new legislation. See Ch. 390, sec. 4, § 18-7-109(1)(a), 2017 Colo. Sess. Laws 2012, 2013 to 14.

7-1:09

**Posting a Private Image by a Juvenile (Image of Self)**

The elements of the [crime] [offense] of posting a private image by a juvenile (image of self) are:

1. That the [defendant] [juvenile],
2. in the State of Colorado, at or about the date and place charged,
3. while under eighteen years of age,
4. knowingly,
5. through digital or electronic means,
6. distributed, displayed, or published,
7. to the view of another person who is at least fourteen years of age or is less than four years younger than the [defendant] [juvenile],
8. a sexually explicit image of [himself] [herself],
9. when the recipient did not solicit or request to be supplied with the image and suffered emotional distress.

[10. and that the [defendant's] [juvenile's] conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find [the defendant guilty] [that the juvenile committed the offense] of posting a private image by a juvenile (image of self).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more



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**of the elements beyond a reasonable doubt, you should find [the defendant not guilty] [that the juvenile did not commit the offense] of posting a private image by a juvenile (image of self).**

### COMMENT

1. *See* § 18-7-109(1)(b), C.R.S. 2019.
2. *See* Instruction F:195 (defining “knowingly”); Instruction F:340.5 (defining “sexually explicit image”).
3. *See* Instruction H:49.8 (affirmative defense of “coerced, threatened, or intimidated”).
4. Because this offense only applies to juveniles, the Committee has added the third element, which stems from the statutory definition of “juvenile” as it applies to this offense. *See* § 18-7-109(8)(a).

Furthermore, the Committee recognizes that juveniles are not entitled to a trial by jury for misdemeanors or petty offenses. *See* § 19-2-107(2), C.R.S. 2019. Nevertheless, the Committee has created this instruction in the event that a juvenile would ever face a jury trial in criminal court for this offense. Furthermore, the Committee has provided bracketed language throughout the instruction to match the appropriate venue. If the proceeding takes places in criminal court, the court should use the first set of brackets. If the proceeding takes place in juvenile court, the court should use the second set of brackets, which replaces several terms (i.e., “crime,” “defendant,” “guilty”) with their appropriate counterpart (i.e., “offense,” “juvenile,” “committed the offense”).

5. The Committee added this instruction in 2017 pursuant to new legislation. *See* Ch. 390, sec. 4, § 18-7-109(1)(b), 2017 Colo. Sess. Laws 2012, 2014.

### 7-1:10.INT

#### **Posting a Private Image by a Juvenile—Interrogatory (Aggravating Circumstances)**

**If you find [the defendant not guilty] [that the juvenile did not commit the offense] of posting a private image by a juvenile, you should disregard this instruction and sign the verdict form to indicate your [not guilty verdict] [verdict of non-commission].**

**If, however, you find [the defendant guilty] [that**



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the juvenile committed the offense] of posting a private image by a juvenile, you should sign the verdict form to indicate your finding of [guilt] [commission], and answer the following verdict question on the verdict form:

Were there aggravating circumstances? (Answer “Yes” or “No”)

There were aggravating circumstances only if:

[1. the [defendant] [juvenile] committed the offense with the intent to coerce, intimidate, threaten, or otherwise cause emotional distress to the depicted person.]

[1. the [defendant] [juvenile] had previously posted a private image and completed a diversion program or education program for the act pursuant to law or had a prior adjudication for posting a private image by a juvenile.]

[1. the [defendant] [juvenile] distributed, displayed, or published three or more images that depicted three or more separate and distinct persons.]

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

## COLORADO JURY INSTRUCTIONS—CRIMINAL

### COMMENT

1. *See* § 18-7-109(5)(a), C.R.S. 2019.
2. *See* Instruction F:185 (defining “with intent”); *see, e.g.*, Instruction E:28 (special verdict form).
3. If necessary, the court should instruct the jury about the relevant diversion or education program. *See* § 18-7-109(5)(e).
4. The Committee added this instruction in 2017 pursuant to new legislation. *See* Ch. 390, sec. 4, § 18-7-109(5)(a), 2017 Colo. Sess. Laws 2012, 2015.

### 7-1:11

#### Possessing a Private Image by a Juvenile

The elements of the [crime] [offense] of possessing a private image by a juvenile are:

1. That the [defendant] [juvenile],
2. in the State of Colorado, at or about the date and place charged,
3. while under eighteen years of age,
4. knowingly,
5. through digital or electronic means,
6. possessed a sexually explicit image of another person who was at least fourteen years of age or was less than four years younger than the [defendant] [juvenile],
7. without the depicted person’s permission, and
8. did not take reasonable steps to either destroy or delete the image within seventy-two hours after initially viewing the image, and
9. did not report the initial viewing of such image to law enforcement or a school resource of-



## OBSCEITY

ficer within seventy-two hours after initially viewing the image.

[10. and that the [defendant's] [juvenile's] conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find [the defendant guilty] [that the juvenile committed the offense] of possessing a private image by a juvenile.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find [the defendant not guilty] [that the juvenile did not commit the offense] of possessing a private image by a juvenile.

## COMMENT

1. See § 18-7-109(2), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”); Instruction F:340.5 (defining “sexually explicit image”); Instruction F:329 (defining “school resource officer”).

3. See Instruction H:49.8 (affirmative defense of “coerced, threatened, or intimidated”).

4. Because this offense only applies to juveniles, the Committee has added the third element, which stems from the statutory definition of “juvenile” as it applies to this offense. See § 18-7-109(8)(a).

Furthermore, the Committee recognizes that juveniles are not entitled to a trial by jury for misdemeanors or petty offenses. See § 19-2-107(2), C.R.S. 2019. Nevertheless, the Committee has created this instruction in the event that a juvenile would ever face a jury trial in criminal court for this offense. Furthermore, the Committee has provided bracketed language throughout the instruction to match the appropriate venue. If the proceeding takes place in criminal court, the court should use the first set of brackets. If the proceeding takes place in juvenile court, the court should use the second set of brackets, which replaces several terms (i.e., “crime,” “defendant,” “guilty”) with their appropriate counterpart (i.e., “offense,” “juvenile,” “committed the offense”).



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5. The Committee added this instruction in 2017 pursuant to new legislation. See Ch. 390, sec. 4, § 18-7-109(2), 2017 Colo. Sess. Laws 2012, 2014.

### 7-1:12.INT

#### Possessing a Private Image by a Juvenile—Interrogatory (Separate Images)

If you find [the defendant not guilty] [that the juvenile did not commit the offense] of possessing a private image by a juvenile, you should disregard this instruction and sign the verdict form to indicate your [not guilty verdict] [verdict of non-commission].

If, however, you find [the defendant guilty] [that the juvenile committed the offense] of possessing a private image by a juvenile, you should sign the verdict form to indicate your finding of [guilt] [commission], and answer the following verdict question on the verdict form:

Did the [defendant] [juvenile] possess a high number of separate images depicting distinct persons? (Answer “Yes” or “No”)

The [defendant] [juvenile] possessed a high number of separate images depicting distinct persons only if:

1. the [defendant] [juvenile] possessed ten or more separate images, and
2. the images depicted three or more separate and distinct persons.

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

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After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. *See* § 18-7-109(5)(b), C.R.S. 2019.

2. *See, e.g.*, Instruction E:28 (special verdict form).

3. The Committee added this instruction in 2017 pursuant to new legislation. *See* Ch. 390, sec. 4, § 18-7-109(5)(b), 2017 Colo. Sess. Laws 2012, 2015.

## CHAPTER 7-2

## PROSTITUTION

### 7-2:01

#### Prostitution

The elements of the crime of prostitution are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. performed or offered or agreed to perform,
4. any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse,
5. with any person who was not his [her] spouse,
6. in exchange for money or other thing of value.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide

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**the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prostitution.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prostitution.**

### COMMENT

1. *See* § 18-7-201(1), C.R.S. 2019.

2. *See* Instruction F:16 (defining “anal intercourse”); Instruction F:81 (defining “cunnilingus”); Instruction F:147 (defining “fellatio”); Instruction F:217 (defining “masturbation”); Instruction F:371 (defining “thing of value”).

3. The term “sexual intercourse” is not defined in section 18-7-201.

4. Section 18-7-201.3(1), C.R.S. 2019, establishes an affirmative defense where the offense “was committed as a direct result of being a victim of human trafficking.”

5. + Section 18-7-209, C.R.S. 2019, provides for immunity from criminal liability for minors who are charged with this crime and were victims of human trafficking. The Committee expresses no opinion regarding whether this provision allows for the determination of immunity prior to trial. *Cf.* *People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987) (“We conclude that section 18-1-704.5(3) was intended to and indeed does authorize a court to dismiss a criminal prosecution at the pretrial stage of the case when the conditions of the statute have been satisfied. . . . [T]he phrase ‘shall be immune from criminal prosecution’ can only be construed to mean that the statute was intended to bar criminal proceedings against a person for the use of force under the circumstances set forth in subsection (2) of section 18-1-704.5.”). In addition, the Committee expresses no opinion on whether this statute could authorize affirmative defense instructions. *Cf. id.* at 981 (“[I]f the pretrial motion to dismiss on grounds of statutory immunity is denied, the defendant may nonetheless raise at trial, as an affirmative defense to criminal charges arising out of the defendant’s use of physical force against an intruder into his home, the statutory conditions set forth in section 18-1-704.5(2).”); *see also* Instruction H:32.7 (affirmative defense of victim of human trafficking of a minor).

6. In 2015, the Committee added Comment 4. *See* Ch. 107, sec. 1, § 18-7-201.3(1), 2015 Colo. Sess. Laws 311, 311.

7. + In 2019, the Committee added Comment 5 pursuant to new legislation. *See* Ch. 147, sec. 3, § 18-7-209, 2019 Colo. Sess. Laws 1764, 1766.



## PROSTITUTION

7-2:02

### Prostitution With Knowledge of Being Infected With Hiv

The elements of the crime of prostitution with knowledge of being infected with HIV are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. performed or offered or agreed to perform,
4. any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse,
5. with a person who was not his [her] spouse,
6. in exchange for money or any other thing of value, and
7. the defendant had been tested for acquired immune deficiency syndrome, and the results of such test indicated the presence of the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prostitution with knowledge of being infected with HIV.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prostitution with knowledge of being infected with HIV.

## COLORADO JURY INSTRUCTIONS—CRIMINAL

### COMMENT

1. *See* § 18-7-201.7(1), C.R.S. 2019.

2. *See* Instruction F:16 (defining “anal intercourse”); Instruction F:81 (defining “cunnilingus”); Instruction F:147 (defining “fellatio”); Instruction F:217 (defining “masturbation”); Instruction F:371 (defining “thing of value”).

3. In 2016, the General Assembly repealed the crime of prostitution with knowledge of being infected with acquired immune deficiency syndrome, effective July 1, 2016. Therefore, the court should not provide this instruction if the alleged offense occurred after the effective date. *See* Ch. 230, sec. 3, § 18-7-201.7, 2016 Colo. Sess. Laws 895, 914.

4. Although the title of the offense includes the word “knowledge,” the provision defining the offense does not include a requirement that the defendant have known of the test results. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

5. In 2016, the Committee added Comment 3 and renumbered the subsequent comment.

### 7-2:03

#### **Soliciting Another for Prostitution**

**The elements of the crime of soliciting another for prostitution are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. solicited another for the purpose of prostitution.**

**[4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**

## PROSTITUTION

**the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of soliciting another for prostitution.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of soliciting another for prostitution.**

## COMMENT

1. *See* § 18-7-202(1)(a), C.R.S. 2019.

2. If the defendant is not separately charged with prostitution, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. *See* Instruction 7-2:01 (prostitution).

3. + Section 18-7-209, C.R.S. 2019, provides for immunity from criminal liability for minors who are charged with this crime and were victims of human trafficking. The Committee expresses no opinion regarding whether this provision allows for the determination of immunity prior to trial. *Cf.* *People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987) (“We conclude that section 18-1-704.5(3) was intended to and indeed does authorize a court to dismiss a criminal prosecution at the pretrial stage of the case when the conditions of the statute have been satisfied. . . . [T]he phrase ‘shall be immune from criminal prosecution’ can only be construed to mean that the statute was intended to bar criminal proceedings against a person for the use of force under the circumstances set forth in subsection (2) of section 18-1-704.5.”). In addition, the Committee expresses no opinion on whether this statute could authorize affirmative defense instructions. *Cf. id.* at 981 (“[I]f the pretrial motion to dismiss on grounds of statutory immunity is denied, the defendant may nonetheless raise at trial, as an affirmative defense to criminal charges arising out of the defendant’s use of physical force against an intruder into his home, the statutory conditions set forth in section 18-1-704.5(2).”); *see also* Instruction H:32.7 (affirmative defense of victim of human trafficking of a minor).

4. + In 2019, the Committee added Comment 3 pursuant to new legislation. *See* Ch. 147, sec. 3, § 18-7-209, 2019 Colo. Sess. Laws 1764, 1766.



7-2:04

**Soliciting for Prostitution (Arranging)**

The elements of the crime of soliciting for prostitution (arranging) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. arranged or offered to arrange a meeting of persons for the purpose of prostitution.
- [4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of soliciting for prostitution (arranging).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of soliciting for prostitution (arranging).

**COMMENT**

1. See § 18-7-202(1)(b), C.R.S. 2019.

2. If the defendant is not separately charged with prostitution, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. See Instruction 7-2:01 (prostitution).

3. + Section 18-7-209, C.R.S. 2019, provides for immunity from criminal liability for minors who are charged with this crime and were

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victims of human trafficking. The Committee expresses no opinion regarding whether this provision allows for the determination of immunity prior to trial. *Cf. People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987) (“We conclude that section 18-1-704.5(3) was intended to and indeed does authorize a court to dismiss a criminal prosecution at the pretrial stage of the case when the conditions of the statute have been satisfied. . . . [T]he phrase ‘shall be immune from criminal prosecution’ can only be construed to mean that the statute was intended to bar criminal proceedings against a person for the use of force under the circumstances set forth in subsection (2) of section 18-1-704.5.”). In addition, the Committee expresses no opinion on whether this statute could authorize affirmative defense instructions. *Cf. id.* at 981 (“[I]f the pretrial motion to dismiss on grounds of statutory immunity is denied, the defendant may nonetheless raise at trial, as an affirmative defense to criminal charges arising out of the defendant’s use of physical force against an intruder into his home, the statutory conditions set forth in section 18-1-704.5(2).”); *see also* Instruction H:32.7 (affirmative defense of victim of human trafficking of a minor).

4. + In 2019, the Committee added Comment 3 pursuant to new legislation. *See* Ch. 147, sec. 3, § 18-7-209, 2019 Colo. Sess. Laws 1764, 1766.

### 7-2:05

#### **Soliciting for Prostitution (Directing)**

**The elements of the crime of soliciting for prostitution (directing) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. directed another to a place,**
- 4. knowing such direction was for the purpose of prostitution.**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements be-**



## COLORADO JURY INSTRUCTIONS—CRIMINAL

**yond a reasonable doubt, you should find the defendant guilty of soliciting for prostitution (directing).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of soliciting for prostitution (directing).**

### COMMENT

1. *See* § 18-7-202(1)(c), C.R.S. 2019.

2. If the defendant is not separately charged with prostitution, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. *See* Instruction 7-2:01 (prostitution).

3. + Section 18-7-209, C.R.S. 2019, provides for immunity from criminal liability for minors who are charged with this crime and were victims of human trafficking. The Committee expresses no opinion regarding whether this provision allows for the determination of immunity prior to trial. *Cf.* *People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987) (“We conclude that section 18-1-704.5(3) was intended to and indeed does authorize a court to dismiss a criminal prosecution at the pretrial stage of the case when the conditions of the statute have been satisfied. . . . [T]he phrase ‘shall be immune from criminal prosecution’ can only be construed to mean that the statute was intended to bar criminal proceedings against a person for the use of force under the circumstances set forth in subsection (2) of section 18-1-704.5.”). In addition, the Committee expresses no opinion on whether this statute could authorize affirmative defense instructions. *Cf. id.* at 981 (“[I]f the pretrial motion to dismiss on grounds of statutory immunity is denied, the defendant may nonetheless raise at trial, as an affirmative defense to criminal charges arising out of the defendant’s use of physical force against an intruder into his home, the statutory conditions set forth in section 18-1-704.5(2).”); *see also* Instruction H:32.7 (affirmative defense of victim of human trafficking of a minor).

4. + In 2019, the Committee added Comment 3 pursuant to new legislation. *See* Ch. 147, sec. 3, § 18-7-209, 2019 Colo. Sess. Laws 1764, 1766.



## PROSTITUTION

7-2:06

### Pandering (Inducing)

The elements of the crime of pandering (inducing) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. for money or other thing of value,
4. induced a person by [menacing] [criminal intimidation] to commit prostitution.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of pandering (inducing).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of pandering (inducing).

### COMMENT

1. See § 18-7-203(1)(a), C.R.S. 2019.

2. See Instruction F:371 (defining "thing of value").

3. It is unclear how the term "criminal intimidation" should be defined because there is no offense with that name. The term may be similar to the offense of "criminal extortion." See *Whimbush v. People*, 869 P.2d 1245, 1249 (Colo. 1994) ("The former version of [section 18-3-207] did not expressly prohibit threats to the 'economic well-being' of the threatened person, and the crime was categorized as a class 1 misdemeanor entitled 'criminal intimidation.' Ch. 121, sec. 1, § 40-3-207,

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1971 Colo. Sess. Laws 388, 421. In 1975, the statute was amended to include threats to cause economic harm, and the crime was elevated to a class 4 felony entitled 'criminal extortion.' Ch. 167, sec. 8, § 18-3-207, 1975 Colo. Sess. Laws 616, 618.").

4. If the defendant is not separately charged with prostitution or menacing, give the jury the elemental instruction for the offense(s) without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction(s) for the referenced offense(s) immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense(s). *See* Instruction 3-2:30 (menacing); Instruction 7-2:01 (prostitution).

**7-2:07**

### **Pandering (Arranging)**

**The elements of the crime of pandering (arranging) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. for money or other thing of value,**
- 5. arranged or offered to arrange a situation in which a person may practice prostitution.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of pandering (arranging).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you**

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**should find the defendant not guilty of pandering (arranging).**

### COMMENT

1. *See* § 18-7-203(1)(b), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:371 (defining “thing of value”).

3. If the defendant is not separately charged with prostitution, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. *See* Instruction 7-2:01 (prostitution).

### 7-2:08

#### Keeping a Place of Prostitution (Use)

**The elements of the crime of keeping a place of prostitution (use) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. had or exercised control over the use of any place which offered seclusion or shelter for the practice of prostitution, and
4. knowingly,
5. granted or permitted the use of the place for the purpose of prostitution.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**



## COLORADO JURY INSTRUCTIONS—CRIMINAL

**the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of keeping a place of prostitution (use).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of keeping a place of prostitution (use).**

### COMMENT

1. *See* § 18-7-204(1)(a), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”).

3. If the defendant is not separately charged with prostitution, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. *See* Instruction 7-2:01 (prostitution).

4. + Section 18-7-209, C.R.S. 2019, provides for immunity from criminal liability for minors who are charged with this crime and were victims of human trafficking. The Committee expresses no opinion regarding whether this provision allows for the determination of immunity prior to trial. *Cf.* *People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987) (“We conclude that section 18-1-704.5(3) was intended to and indeed does authorize a court to dismiss a criminal prosecution at the pretrial stage of the case when the conditions of the statute have been satisfied. . . . [T]he phrase ‘shall be immune from criminal prosecution’ can only be construed to mean that the statute was intended to bar criminal proceedings against a person for the use of force under the circumstances set forth in subsection (2) of section 18-1-704.5.”). In addition, the Committee expresses no opinion on whether this statute could authorize affirmative defense instructions. *Cf. id.* at 981 (“[I]f the pretrial motion to dismiss on grounds of statutory immunity is denied, the defendant may nonetheless raise at trial, as an affirmative defense to criminal charges arising out of the defendant’s use of physical force against an intruder into his home, the statutory conditions set forth in section 18-1-704.5(2).”); *see also* Instruction H:32.7 (affirmative defense of victim of human trafficking of a minor).

5. + In 2019, the Committee added Comment 4 pursuant to new legislation. *See* Ch. 147, sec. 3, § 18-7-209, 2019 Colo. Sess. Laws 1764, 1766.

## PROSTITUTION

7-2:09

### Keeping a Place of Prostitution (Continued Use)

The elements of the crime of keeping a place of prostitution (continued use) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. had or exercised control over the use of any place which offered seclusion or shelter for the practice of prostitution, and
4. permitted the continued use of the place for the purpose of prostitution,
5. after becoming aware of facts or circumstances from which he [she] should reasonably have known that the place was being used for purposes of prostitution.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of keeping a place of prostitution (continued use).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of keeping a place of prostitution (continued use).

### COMMENT

1. See § 18-7-204(1)(b), C.R.S. 2019.



## COLORADO JURY INSTRUCTIONS—CRIMINAL

2. If the defendant is not separately charged with prostitution, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. *See* Instruction 7-2:01 (prostitution).

3. + Section 18-7-209, C.R.S. 2019, provides for immunity from criminal liability for minors who are charged with this crime and were victims of human trafficking. The Committee expresses no opinion regarding whether this provision allows for the determination of immunity prior to trial. *Cf.* *People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987) (“We conclude that section 18-1-704.5(3) was intended to and indeed does authorize a court to dismiss a criminal prosecution at the pretrial stage of the case when the conditions of the statute have been satisfied . . . . [T]he phrase ‘shall be immune from criminal prosecution’ can only be construed to mean that the statute was intended to bar criminal proceedings against a person for the use of force under the circumstances set forth in subsection (2) of section 18-1-704.5.”). In addition, the Committee expresses no opinion on whether this statute could authorize affirmative defense instructions. *Cf. id.* at 981 (“[I]f the pre-trial motion to dismiss on grounds of statutory immunity is denied, the defendant may nonetheless raise at trial, as an affirmative defense to criminal charges arising out of the defendant’s use of physical force against an intruder into his home, the statutory conditions set forth in section 18-1-704.5(2).”); *see also* Instruction H:32.7 (affirmative defense of victim of human trafficking of a minor).

4. + In 2019, the Committee added Comment 3 pursuant to new legislation. *See* Ch. 147, sec. 3, § 18-7-209, 2019 Colo. Sess. Laws 1764, 1766.

### 7-2:10

#### Patronizing a Prostitute (Act)

**The elements of the crime of patronizing a prostitute (act) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. engaged in an act of sexual intercourse or deviate sexual conduct,



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4. with a prostitute,
5. who was not his [her] spouse.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of patronizing a prostitute (act).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of patronizing a prostitute (act).

### COMMENT

1. *See* § 18-7-205(1)(a), C.R.S. 2019.
2. The terms “sexual intercourse” and “deviate sexual conduct” are not defined for purposes of section 18-7-205.
3. Although the term “prostitute” is not defined by statute, a supplemental instruction defining the offense of “prostitution” (without the two concluding paragraphs that explain the burden of proof) should provide sufficient guidance. *See* Instruction 7-2:01 (prostitution).

### 7-2:11

#### Patronizing a Prostitute (Place)

The elements of the crime of patronizing a prostitute (place) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. entered or remained in a place of prostitution,

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**4. with intent to engage in an act of sexual intercourse or deviate sexual conduct,**

**5. with a person who was not his [her] spouse.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of patronizing a prostitute (place).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of patronizing a prostitute (place).**

**COMMENT**

1. *See* § 18-7-205(1)(b), C.R.S. 2019.

2. *See* Instruction F:185 (defining “with intent”).

3. The terms “sexual intercourse” and “deviate sexual conduct” are not defined for purposes of section 18-7-205.

4. Give the jury the elemental instruction for the offense of prostitution and omit the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. *See* Instruction 7-2:01 (prostitution).

**7-2:12**

**Patronizing a Prostitute With Knowledge of Being Infected**

**The elements of the crime of patronizing a prostitute with knowledge of being infected are:**

**1. That the defendant,**

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2. in the State of Colorado, at or about the date and place charged,

3. had been tested for acquired immune deficiency syndrome, and the results of such test indicated the presence of the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome, and

4. engaged in an act of sexual intercourse or deviate sexual conduct with a prostitute who was not his [her] spouse; or entered or remained in a place of prostitution with intent to engage in an act of sexual intercourse or deviate sexual conduct with a person who was not his [her] spouse.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of patronizing a prostitute with knowledge of being infected.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of patronizing a prostitute with knowledge of being infected.

## COMMENT

1. See § 18-7-205.7(1), C.R.S. 2019 (incorporating section 18-7-205(1)).

2. See Instruction F:185 (defining “with intent”).

3. In 2016, the General Assembly repealed the crime of patronizing a prostitute with knowledge of being infected with acquired immune deficiency syndrome, effective July 1, 2016. Therefore, the court should not provide this instruction if the alleged offense occurred after the effective date. See Ch. 230, sec. 3, § 18-7-205.7, 2016 Colo. Sess. Laws 895, 914.



## COLORADO JURY INSTRUCTIONS—CRIMINAL

4. The term “deviate sexual conduct” is not defined by statute.

5. Although the title of the offense includes the word “knowledge,” the provision defining the offense does not include a requirement that the defendant have known of the test results. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

6. Give the jury the elemental instruction for the offense of prostitution and omit the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. *See* Instruction 7-2:01 (prostitution).

7. Although the term “prostitute” is not defined by statute, the supplemental instruction recommended in Comment 6 should provide sufficient guidance.

8. In 2016, the Committee added Comment 3 and renumbered the subsequent comments.

### 7-2:13

#### Pimping

**The elements of the crime of pimping are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. lived on or was supported or maintained in whole or in part by money or other thing of value,
5. earned, received, procured, or realized by any other person,
6. through prostitution.

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**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of pimping.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of pimping.**

### COMMENT

1. See § 18-7-206, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:371 (defining “thing of value”).

3. If the defendant is not separately charged with prostitution, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. See Instruction 7-2:01 (prostitution).

## 7-2:14

### Prostitute Making Display

**The elements of the crime of prostitute making display are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. endeavored by word, gesture, or action,**
- 4. to further the practice of prostitution,**



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**5. in any public place or within public view.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prostitute making display.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prostitute making display.**

**COMMENT**

1. See § 18-7-207, C.R.S. 2019.

2. See Instruction F:303 (defining “public place”).

3. If the defendant is not separately charged with prostitution, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. See Instruction 7-2:01 (prostitution).

4. + Section 18-7-209, C.R.S. 2019, provides for immunity from criminal liability for minors who are charged with this crime and were victims of human trafficking. The Committee expresses no opinion regarding whether this provision allows for the determination of immunity prior to trial. *Cf.* *People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987) (“We conclude that section 18-1-704.5(3) was intended to and indeed does authorize a court to dismiss a criminal prosecution at the pretrial stage of the case when the conditions of the statute have been satisfied . . . . [T]he phrase ‘shall be immune from criminal prosecution’ can only be construed to mean that the statute was intended to bar criminal proceedings against a person for the use of force under the circumstances set forth in subsection (2) of section 18-1-704.5.”). In addition, the Committee expresses no opinion on whether this statute could authorize affirmative defense instructions. *Cf. id.* at 981 (“[I]f the pretrial motion to dismiss on grounds of statutory immunity is denied, the



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defendant may nonetheless raise at trial, as an affirmative defense to criminal charges arising out of the defendant's use of physical force against an intruder into his home, the statutory conditions set forth in section 18-1-704.5(2)."); *see also* Instruction H:32.7 (affirmative defense of victim of human trafficking of a minor).

5. + In 2019, the Committee added Comment 4 pursuant to new legislation. *See* Ch. 147, sec. 3, § 18-7-209, 2019 Colo. Sess. Laws 1764, 1766.

## **CHAPTER 7-3**

### **PUBLIC INDECENCY**

#### **7-3:01**

#### **Public Indecency (Sexual Intercourse)**

**The elements of the crime of public indecency (sexual intercourse) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. performed an act of sexual intercourse,**
- 4. in a public place or where the conduct may reasonably have been expected to be viewed by members of the public.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of public indecency (sexual intercourse).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you**

**should find the defendant not guilty of public indecency (sexual intercourse).**

**COMMENT**

1. *See* § 18-7-301(1)(a), C.R.S. 2019.

2. *See* Instruction F:303 (defining “public place”).

3. *See* *People v. Hoskay*, 87 P.3d 194, 198 (Colo. App. 2003) (trial court did not err by refusing to instruct the jury that, in order to commit the offense of public indecency, a person must know that he is in a public place; “superimposing a requirement that an offender must know that he or she is in a ‘public place’ within the meaning of § 18-1-901(3)(n) would frustrate the clear intent of the General Assembly”).

**7-3:02**

**Public Indecency (Lewd Exposure)**

**The elements of the crime of public indecency (lewd exposure) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. in a public place or where the conduct may reasonably have been expected to be viewed by members of the public,
4. performed a lewd exposure of an intimate part of the body, other than the genitals,
5. with intent to arouse or to satisfy the sexual desire of any person.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of public indecency (lewd exposure).

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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of public indecency (lewd exposure).

### COMMENT

1. See § 18-7-301(1)(c), C.R.S. 2019.
2. See Instruction F:185 (defining “with intent”); Instruction F:186 (defining “intimate parts”); Instruction F:303 (defining “public place”).
3. The term “lewd” is not defined by statute. See *Webster’s Third New International Dictionary* 1301 (2002) (defining “lewd,” in relevant part, as: “inciting to sensual desire or imagination”).
4. See *People v. Hoskay*, 87 P.3d 194, 198 (Colo. App. 2003) (trial court did not err by refusing to instruct the jury that, in order to commit the offense of public indecency, a person must know that he is in a public place; “superimposing a requirement that an offender must know that he or she is in a ‘public place’ within the meaning of § 18-1-901(3)(n) would frustrate the clear intent of the General Assembly”).

### 7-3:03

#### Public Indecency (Lewd Fondling or Caress)

The elements of the crime of public indecency (lewd fondling or caress) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. in a public place or where the conduct may reasonably have been expected to be viewed by members of the public,
  4. performed a lewd fondling or caress of the body of another person.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of public indecency (lewd fondling or caress).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of public indecency (lewd fondling or caress).

### COMMENT

1. See § 18-7-301(1)(d), C.R.S. 2019.
2. See Instruction F:186 (defining “intimate parts”); Instruction F:303 (defining “public place”).
3. The term “lewd” is not defined by statute. See *Webster’s Third New International Dictionary* 1301 (2002) (defining “lewd,” in relevant part, as: “inciting to sensual desire or imagination”).
4. See *People v. Hoskay*, 87 P.3d 194, 198 (Colo. App. 2003) (trial court did not err by refusing to instruct the jury that, in order to commit the offense of public indecency, a person must know that he is in a public place; “superimposing a requirement that an offender must know that he or she is in a ‘public place’ within the meaning of § 18-1-901(3)(n) would frustrate the clear intent of the General Assembly”).

### 7-3:04

#### Public Indecency (Knowing Exposure)

The elements of the crime of public indecency (knowing exposure) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. in a public place or where the conduct might reasonably have been expected to be viewed by members of the public,
4. knowingly,

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5. exposed his [her] genitals to the view of a person,

6. under circumstances in which such conduct was likely to cause affront or alarm to the other person.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of public indecency (knowing exposure).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of public indecency (knowing exposure).

## COMMENT

1. See § 18-7-301(1)(e), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:303 (defining “public place”).

3. See *People v. Hoskay*, 87 P.3d 194, 198 (Colo. App. 2003) (trial court did not err by refusing to instruct the jury that, in order to commit the offense of public indecency, a person must know that he is in a public place; “superimposing a requirement that an offender must know that he or she is in a ‘public place’ within the meaning of § 18-1-901(3)(n) would frustrate the clear intent of the General Assembly”).

4. + See *People in Interest of D.C.*, 2019 COA 22, ¶¶ 8–9, 14, 439 P.3d 72, 74–75 (holding that, where the defendant exposed himself in a classroom in the Division of Youth Corrections, the evidence supported a finding that “the conduct may reasonably be expected to be viewed by members of the public” because many members of the community were routinely present in the school; further stating that “we see no reason why DYC teachers, staff, and juvenile residents are not ‘members of the public’”).

5. + In 2019, the Committee added Comment 4.

7-3:05

**Indecent Exposure (Knowing Exposure)**

**The elements of the crime of indecent exposure (knowing exposure) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. exposed his [her] genitals to the view of any person,**
- 5. under circumstances in which such conduct was likely to cause affront or alarm to the other person,**
- 6. with the intent to arouse or satisfy the sexual desire of any person.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of indecent exposure (knowing exposure).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of indecent exposure (knowing exposure).**

**COMMENT**

1. See § 18-7-302(1)(a), C.R.S. 2019.



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2. See Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”).

3. See *People v. Barrus*, 232 P.3d 264, 271 (Colo. App. 2009) (“to satisfy the elements of the crime of indecent exposure, a person must do something that would make his or her genitals visible to another person”; however, the prosecution is not required to prove that another person was “subjectively affronted or alarmed”).

**7-3:06**

### **Indecent Exposure (Masturbation)**

**The elements of the crime of indecent exposure (masturbation) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. performed an act of masturbation in a manner which exposed the act to the view of any person,**
- 5. under circumstances in which such conduct was likely to cause affront or alarm to the other person.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of indecent exposure (masturbation).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you**

should find the defendant not guilty of indecent exposure (masturbation).

COMMENT

1. See § 18-7-302(1)(b), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:218 (broadly defining “masturbation,” for purposes of this offense only, in a manner that does not require exposure of the genitals).

CHAPTER 7-4

CHILD PROSTITUTION

7-4:01

Soliciting for Child Prostitution (Another)

The elements of the crime of soliciting for child prostitution (another) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. solicited another,
4. for the purpose of prostitution of a child or by a child.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of soliciting for child prostitution (another).

After considering all the evidence, if you decide

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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of soliciting for child prostitution (another).**

### COMMENT

1. *See* § 18-7-402(1)(a), C.R.S. 2019.

2. *See* Instruction F:50 (defining “child”); Instruction F:292 (defining “prostitution by a child”); Instruction F:293 (defining “prostitution of a child”).

3. The Committee is of the view that section 18-7-402(1)(a) describes a culpable mental state by requiring that the solicitation be for the purpose of child prostitution. Accordingly, unlike COLJI-Crim. 24:03 (1983), the above model instruction does not supplement the statutory language by imputing the mens rea of “knowingly.” However, there is authority holding that it is not plain error to add the term “knowingly.” *See* *People v. Emerterio*, 819 P.2d 516, 518–19 (Colo. App. 1991), *rev’d on other grounds*, *People v. San Emerterio*, 839 P.2d 1161 (Colo. 1992).

4. *See* *People v. Jacobs*, 91 P.3d 438, 441 (Colo. App. 2003) (“the statutory elements of the general inchoate offense of solicitation do not apply to the separate substantive offense of soliciting for child prostitution”; abandonment and renunciation is not an affirmative defense to soliciting for child prostitution).

### 7-4:02

#### **Soliciting for Child Prostitution (Arranging)**

**The elements of the crime of soliciting for child prostitution (arranging) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. arranged or offered to arrange a meeting of persons,**
- 4. for the purpose of prostitution of a child or by a child.**

**[5. and that the defendant’s conduct was not**



legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of soliciting for child prostitution (arranging).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of soliciting for child prostitution (arranging).

#### COMMENT

1. See § 18-7-402(1)(b), C.R.S. 2019.
2. See Instruction F:50 (defining “child”); Instruction F:292 (defining “prostitution by a child”); Instruction F:293 (defining “prostitution of a child”).
3. The Committee is of the view that section 18-7-402(1)(a) describes a mental state by requiring that the arranging or offering to arrange be for the purpose of child prostitution. Accordingly, unlike COLJI-Crim. 24:03 (1983), the above model instruction does not supplement the statutory language by imputing the mens rea of “knowingly.” However, there is authority holding that it is not plain error to add the term “knowingly.” See *People v. Emerterio*, 819 P.2d 516, 518–19 (Colo. App. 1991), *rev’d on other grounds*, *People v. San Emerterio*, 839 P.2d 1161 (Colo. 1992).
4. See *People v. Jacobs*, 91 P.3d 438, 441 (Colo. App. 2003) (“the statutory elements of the general inchoate offense of solicitation do not apply to the separate substantive offense of soliciting for child prostitution”; abandonment and renunciation is not an affirmative defense to soliciting for child prostitution).

#### 7-4:03

### Soliciting for Child Prostitution (Directing)

The elements of the crime of soliciting for child prostitution (directing) are:

1. That the defendant,

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2. in the State of Colorado, at or about the date and place charged,

3. directed another to a place,

4. knowing such direction was for the purpose of prostitution of a child or by a child.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of soliciting for child prostitution (directing).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of soliciting for child prostitution (directing).

### COMMENT

1. See § 18-7-402(1)(c), C.R.S. 2019.

2. See Instruction F:50 (defining “child”); Instruction F:195 (defining “knowingly”); Instruction F:292 (defining “prostitution by a child”); Instruction F:293 (defining “prostitution of a child”).

3. See *People v. Jacobs*, 91 P.3d 438, 441 (Colo. App. 2003) (“the statutory elements of the general inchoate offense of solicitation do not apply to the separate substantive offense of soliciting for child prostitution”; abandonment and renunciation is not an affirmative defense to soliciting for child prostitution).

### 7-4:04

## Pandering of a Child (Inducing)

The elements of the crime of pandering of a child (inducing) are:

1. That the defendant,

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2. in the State of Colorado, at or about the date and place charged,

3. for money or other thing of value,

4. induced a child by menacing or criminal intimidation,

5. to commit prostitution.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of pandering of a child (inducing).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of pandering of a child (inducing).

COMMENT

1. See § 18-7-403(1)(a), C.R.S. 2019.

2. See Instruction F:50 (defining “child”); Instruction F:195 (defining “knowingly”); Instruction F:371 (defining “thing of value”); see also Instruction F:292 (defining “prostitution by a child”); Instruction F:293 (defining “prostitution of a child”).

3. Section 18-7-403(1)(a) refers to “prostitution” rather than “prostitution by a child” or “prostitution by a child” (phrases which are defined, for purposes of Part 4 of Article 7, in section 18-7-401(6), (7)). Thus, it is unclear whether “prostitution” should be defined based on sections 18-7-401(6), (7), or on the general definition in section 18-7-201(1).

4. It is unclear how the term “criminal intimidation” should be defined because there is no offense with that name. The term may be synonymous with the offense of “criminal extortion.” See *Whimbush v. People*, 869 P.2d 1245, 1249 (Colo. 1994) (“The former version of [sec-



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tion 18-3-207] did not expressly prohibit threats to the 'economic well-being' of the threatened person, and the crime was categorized as a class 1 misdemeanor entitled 'criminal intimidation.' Ch. 121, sec. 1, § 40-3-207, 1971 Colo. Sess. Laws 388, 421. In 1975, the statute was amended to include threats to cause economic harm, and the crime was elevated to a class 4 felony entitled 'criminal extortion.' Ch. 167, sec. 8, § 18-3-207, 1975 Colo. Sess. Laws 616, 618.”).

5. If the defendant is not separately charged with menacing, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense. *See* Instruction 3-2:30 (menacing).

**7-4:05**

### **Pandering of a Child (Arranging)**

**The elements of the crime of pandering of a child (arranging) are:**

- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. for money or other thing of value,**
  - 4. knowingly,**
  - 5. arranged or offered to arrange a situation in which a child may practice prostitution.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of pandering of a child (arranging).**

**After considering all the evidence, if you decide**

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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of pandering of a child (arranging).**

### COMMENT

1. See § 18-7-403(1)(b), C.R.S. 2019.

2. See Instruction F:50 (defining “child”); Instruction F:195 (defining “knowingly”); Instruction F:371 (defining “thing of value”); *see also* Instruction F:292 (defining “prostitution by a child”); Instruction F:293 (defining “prostitution of a child”).

3. Section 18-7-403(1)(b) refers to “prostitution” rather than “prostitution by a child” or “prostitution by a child” (phrases which are defined, for purposes of Part 4 of Article 7, in section 18-7-401(6), (7)). Thus, it is unclear whether “prostitution” should be defined based on sections 18-7-401(6), (7), or on the general definition in section 18-7-201(1).

### 7-4:06

#### Procurement of a Child

**The elements of the crime of procurement of a child are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. gave, transported, provided, or made available, or offered to give, transport, provide, or make available,
5. a child,
6. to another person,
7. for the purpose of prostitution of the child.
- [8. and that the defendant’s conduct was not

## CHILD PROSTITUTION

legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of procurement of a child.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of procurement of a child.

### COMMENT

1. See § 18-7-403.5, C.R.S. 2019.

2. See Instruction F:50 (defining “child”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:293 (defining “prostitution of a child”).

7-4:07

### Keeping a Place of Child Prostitution (Use)

The elements of the crime of keeping a place of child prostitution (use) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. had or exercised control over the use of any place which offered seclusion or shelter for the practice of prostitution, and
4. knowingly,
5. granted or permitted the use of the place for the purpose of prostitution of a child or by a child.
- [6. and that the defendant’s conduct was not



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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of keeping a place of child prostitution (use).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of keeping a place of child prostitution (use).**

**COMMENT**

1. See § 18-7-404(1)(a), C.R.S. 2019.
2. See Instruction F:50 (defining “child”); Instruction F:195 (defining “knowingly”); Instruction F:292 (defining “prostitution by a child”); Instruction F:293 (defining “prostitution of a child”).

**7-4:08**

**Keeping a Place of Child Prostitution (Continued Use)**

**The elements of the crime of keeping a place of child prostitution (continued use) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. had or exercised control over the use of any place which offered seclusion or shelter for the practice of prostitution, and
4. permitted the continued use of the place for the purpose of prostitution of a child or by a child,
5. after becoming aware of facts or circum-

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stances from which he [she] should reasonably have known that the place was being used for purposes of such prostitution.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of keeping a place of child prostitution (continued use).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of keeping a place of child prostitution (continued use).

### COMMENT

1. See § 18-7-404(1)(b), C.R.S. 2019.

2. See Instruction F:50 (defining "child"); Instruction F:292 (defining "prostitution by a child"); Instruction F:293 (defining "prostitution of a child").

7-4:09

### Pimping of a Child

The elements of the crime of pimping of a child are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. lived on or was supported or maintained in whole or in part by money or other thing of value,

## COLORADO JURY INSTRUCTIONS—CRIMINAL

5. earned, received, procured, or realized by a child,

6. through prostitution.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of pimping of a child.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of pimping of a child.

### COMMENT

1. See § 18-7-405, C.R.S. 2019.

2. See Instruction F:50 (defining "child"); Instruction F:195 (defining "knowingly"); Instruction F:371 (defining "thing of value"); *see also* Instruction F:292 (defining "prostitution by a child"); Instruction F:293 (defining "prostitution of a child").

## 7-4:10

### Inducement of Child Prostitution

The elements of the crime of inducement of child prostitution are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. by word or action, other than by menacing or criminal intimidation,
4. induced a child,



## CHILD PROSTITUTION

**5. to engage in an act of prostitution by a child.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of inducement of child prostitution.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inducement of child prostitution.**

### COMMENT

1. See § 18-7-405.5, C.R.S. 2019.

2. See Instruction F:50 (defining “child”); Instruction F:195 (defining “knowingly”); Instruction F:292 (defining “prostitution by a child”).

3. If the defendant is not separately charged with menacing, provide the jury with a supplemental instruction that defines “menacing” without the two concluding paragraphs that explain the burden of proof. See Instruction 3-2:30 (menacing). Place the elemental instruction for menacing immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for menacing.

4. It is unclear how the term “criminal intimidation” should be defined because there is no offense with that name. The term may be synonymous with the offense of “criminal extortion.” See *Whimbush v. People*, 869 P.2d 1245, 1249 n.5 (Colo. 1994) (“The former version of [section 18-3-207] did not expressly prohibit threats to the ‘economic well-being’ of the threatened person, and the crime was categorized as a class 1 misdemeanor entitled ‘criminal intimidation.’ Ch. 121, sec. 1, § 40-3-207, 1971 Colo. Sess. Laws 388, 421. In 1975, the statute was amended to include threats to cause economic harm, and the crime was elevated to a class 4 felony entitled ‘criminal extortion.’ Ch. 167, sec. 8, § 18-3-207, 1975 Colo. Sess. Laws 616, 618.”).

5. See *People v. Hansen*, 708 P.2d 468, 470 (Colo. App. 1985) (“if a defendant’s attempts at persuasion do not induce the child to perform, or to agree to perform, a sexual act in exchange for money or other

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thing of value, he is not guilty of inducement of child prostitution”; “[h]owever, the crime of attempt to induce child prostitution requires neither that a sexual act be performed nor that an agreement to perform be made”).

7-4:11

### Patronizing a Prostituted Child (Act)

The elements of the crime of patronizing a prostituted child (act) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. engaged in an act of prostitution of a child or by a child,
4. with a child who was not his [her] spouse.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of patronizing a prostituted child (act).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of patronizing a prostituted child (act).

### COMMENT

1. See § 18-7-406(1)(a), C.R.S. 2019.

2. See Instruction F:50 (defining “child”); Instruction F:292 (defining “prostitution by a child”); Instruction F:293 (defining “prostitution of a child”).

3. See *People v. Madden*, 111 P.3d 452, 459–60 (Colo. 2005) (the

## CHILD PROSTITUTION

General Assembly did not intend to remove the commercial aspect of prostitution when it enacted the definition of “prostitution of a child” in section 18-7-401(7); “the crime of ‘patronizing a prostituted child’ requires an exchange of something of value, a commercial transaction. Such a commercial transaction must occur between the patron—i.e., the person having the sexual contact with the child—or between the patron and the one inducing the child to participate in the sexual act, the pimp. It is precisely this exchange of something of value between the patron and either the pimp or the child that distinguishes this crime from that of sexual assault.”).

4. See *People v. Houser*, 2013 COA 11, ¶¶ 14–27, 337 P.3d 1238, 1244–47 (holding, as a matter of first impression, that a reasonable belief that a child was at least eighteen years old is not defense to charge of patronizing a prostituted child).

5. In 2015, the Committee added Comment 4, citing to *People v. Houser*, *supra*.

### 7-4:12

#### Patronizing a Prostituted Child (Place)

The elements of the crime of patronizing a prostituted child (place) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. entered or remained in a place of prostitution,
4. with intent,
5. to engage in an act of prostitution of a child or by a child,
6. with a child who was not his [her] spouse.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements be-



yond a reasonable doubt, you should find the defendant guilty of patronizing a prostituted child (place).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of patronizing a prostituted child (place).

#### COMMENT

1. *See* § 18-7-406(1)(b), C.R.S. 2019.

2. *See* Instruction F:50 (defining “child”); Instruction F:185 (defining “with intent”); Instruction F:292 (defining “prostitution by a child”); Instruction F:293 (defining “prostitution of a child”).

3. *See* *People v. Madden*, 111 P.3d 452, 459–60 (Colo. 2005) (the General Assembly did not intend to remove the commercial aspect of prostitution when it enacted the definition of “prostitution of a child” in section 18-7-401(7); “the crime of ‘patronizing a prostituted child’ requires an exchange of something of value, a commercial transaction. Such a commercial transaction must occur between the patron—i.e., the person having the sexual contact with the child—or between the patron and the one inducing the child to participate in the sexual act, the pimp. It is precisely this exchange of something of value between the patron and either the pimp or the child that distinguishes this crime from that of sexual assault.”).

#### 7-4:13.SP

#### Child Prostitution Crimes—Special Instruction (Ignorance or Reasonable Belief Is Not a Defense)

It is no defense to a charge of [insert name(s) of offense(s) from Article 7, Part 4] that the defendant did not know the child’s age, or that he [she] reasonably believed the child to be eighteen years of age or older.

#### COMMENT

1. *See* § 18-7-407, C.R.S. 2019 (applicable to “any criminal prosecution under sections 18-7-402 to 18-7-407”).

## **VISUAL REPRESENTATIONS CONTAINING ACTUAL VIOLENCE**

### **CHAPTER 7-5**

## **SEXUALLY EXPLICIT MATERIALS HARMFUL TO CHILDREN**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2016.

**7-5:01**

### **Sexually Explicit Materials Harmful to Children**

#### **COMMENT**

1. In *Tattered Cover, Inc. v. Tooley*, 696 P.2d 780, 782 (Colo. 1985), the supreme court ruled that sections 18-7-501 to 18-7-504, C.R.S., were unconstitutional because no portion of the statutes could be severed from the offending provisions. Because the General Assembly has not amended the statutes, the Committee has not drafted model instructions.

### **CHAPTER 7-6**

## **VISUAL REPRESENTATIONS CONTAINING ACTUAL VIOLENCE**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2016.

**7-6:01**

### **Dispensing Violent Films to Minors**

**The elements of the crime of dispensing violent films to minors are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. sold, rented, or otherwise furnished to a minor

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any video tape, video disc, film representation, or other form of motion picture, and

4. the average person, applying contemporary community standards, would find that the work, taken as a whole, predominantly appealed to the interest in violence, and

5. the work depicted or described, in a patently offensive way, repeated acts of actual, not simulated, violence resulting in serious bodily injury or death, and

6. the work, taken as a whole, lacked serious literary, artistic, political, or scientific value.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of dispensing violent films to minors.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of dispensing violent films to minors.

### COMMENT

1. See § 18-7-601(1), C.R.S. 2019.

2. See Instruction F:229.2 (defining “minor” (dispensing violent films)); Instruction F:332 (defining “serious bodily injury”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:36 (affirmative defense of “mistake as to age”).

4. In *Gorman v. People*, 19 P.3d 662, 665–67 (Colo. 2000), the



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supreme court considered the crime of contributing to the delinquency of a minor and concluded that “the culpable mental state of knowingly applies to the *act* of contributing to the delinquency,” but not to the age element. Although the statute here involves furnishing minors with inappropriate material—a crime that bears some similarity to contributing to the delinquency of a minor, *see* Instruction 6-7:01—the statute itself does not include a culpable mental state, and no appellate case has considered the issue. Therefore, the Committee has not included the mental state of “knowingly” in this instruction.

5. The term “patently offensive” is not defined for purposes of this section. *Cf.* Instruction F:258.7 (defining “patently offensive” for offenses involving obscenity).

### CHAPTER 7-7

## SEXUAL CONDUCT IN A CORRECTIONAL INSTITUTION

### CHAPTER COMMENTS

1. The Committee added this chapter in 2015.

#### 7-7:01

### Sexual Conduct in a Correctional Institution

The elements of the crime of sexual conduct in a correctional institution are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an employee, contract employee, or volunteer of a correctional institution or an individual who performed work or volunteer functions in a correctional institution, and
4. engaged in sexual conduct,
5. with a person who was in lawful custody in a correctional institution.

- [6. and that the defendant’s conduct was not

legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of sexual conduct in a correctional institution.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sexual conduct in a correctional institution.

#### COMMENT

1. *See* § 18-7-701(1), C.R.S. 2019.

2. *See* Instruction F:75.5 (defining “correctional institution”); Instruction F:336.5 (defining “sexual conduct”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute provides for different classifications of offense depending on two separate criteria. The first is the type of sexual conduct, i.e., whether it involved (a) either sexual intrusion or sexual penetration, or (b) solely sexual contact. *See* § 18-7-701(3) to (5), C.R.S. 2019. The second is the defendant’s work status, i.e., whether the defendant was an employee of the correctional institution or was instead a volunteer. *See id.* The Committee has drafted separate interrogatories to address these issues. *See* Instruction 7-7:02.INT; Instruction 7-7:03.INT. The court, however, should only issue one or both of these interrogatories if the respective issues are subject to dispute. Additionally, the statute provides for the most severe form of punishment if both (a) the sexual conduct involved sexual intrusion and/or penetration, and (b) the defendant was an employee. § 18-7-701(3). It provides for an intermediate level of punishment if either (a) the sexual conduct involved solely sexual contact, but the defendant was an employee, § 18-7-701(4)(a), or (b) the sexual conduct involved sexual intrusion and/or penetration, but the defendant was a volunteer, § 18-7-701(4)(b). Finally, it provides for the least severe form of punishment if the sexual conduct involved solely sexual contact and the defendant was a volunteer. § 18-7-701(5).

4. The statute does not define “lawful custody.” If there is a dispute



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whether the alleged victim was “in lawful custody,” the court should consider whether the issue is a legal or factual matter. If the latter, the court should draft a supplemental instruction to guide the jury. *Cf.* *People v. Lanzieri*, 25 P.3d 1170, 1173 (Colo. 2001) (“Informalities or irregularities in a defendant’s confinement do not by themselves make custody unlawful for the purposes of” Colorado’s escape statute.); *People v. West*, 603 P.2d 967, 968 (Colo. App. 1979) (rejecting the defendant’s argument that the trial court erred “in not instructing the jury on the lawfulness of his confinement at a detention facility” because there was “no express requirement that persons convicted under [the statute at issue] be lawfully confined”).

### **7-7:02.INT**

#### **Sexual Conduct in a Correctional Institution— Interrogatory (Type of Conduct)**

**If you find the defendant not guilty of sexual conduct in a correctional institution, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of sexual conduct in a correctional institution, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the sexual conduct involve more than simply sexual contact? (Answer “Yes” or “No”)**

**The sexual conduct involved more than simply sexual contact only if:**

- 1. the sexual conduct included sexual intrusion or sexual penetration.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**



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**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

1. See § 18-7-701(3) to (5), C.R.S. 2019.

2. See Instruction F:336.5 (defining “sexual conduct”); Instruction F:337 (defining “sexual contact”); Instruction F:340 (defining “sexual intrusion”); Instruction F:343 (defining “sexual penetration”).

3. If there is no dispute regarding the type of sexual conduct at issue, the court should not issue this interrogatory. See Instruction 7-7:01, Comment 3.

**7-7:03.INT**

**Sexual Conduct in a Correctional Institution—  
Interrogatory (Work Status)**

**If you find the defendant not guilty of sexual conduct in a correctional institution, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of sexual conduct in a correctional institution, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the defendant work in a correctional institution, other than as a volunteer? (Answer “Yes” or “No”)**

**The defendant worked in a correctional institution, other than as a volunteer, only if:**

- 1. the defendant was an employee or contract employee of a correctional institution or was an employee, contract employee, or individual who**

## SEXUAL CONDUCT IN A CORRECTIONAL INSTITUTION

**performed work functions in a correctional institution.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. See § 18-7-701(3) to (5), C.R.S. 2019.

2. See Instruction F:75.5 (defining “correctional institution”).

3. If there is no dispute regarding the defendant’s work status, the court should not issue this interrogatory. See Instruction 7-7:01, Comment 3.

4. The statutory subsections prompting this interrogatory provide for a more severe classification of offense if the sexual conduct “is committed by an employee or contract employee of a correctional institution or by an employee, contract employee, or individual who performs work functions in a correctional institution *or for the department of corrections, the department of human services, or a community corrections program.*” § 18-7-701(3), (4)(a) (emphasis added). Although the majority of this language appears in the statutory subsection that defines the actual crime of “sexual conduct in a correctional institution,” see § 18-7-701(1), that subsection makes no reference to an individual who performs work functions “for the department of corrections, the department of human services, or a community corrections program.” For this reason, the Committee has not included such language in its model interrogatory.

**CHAPTER 7-8**

**CRIMINAL INVASION OF PRIVACY**

**CHAPTER COMMENTS**

1. The Committee added this chapter in 2015.

**7-8:01**

**Criminal Invasion of Privacy**

**The elements of the crime of criminal invasion of privacy are:**

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. observed or took a photograph of another person's intimate parts, in a situation where the person observed or photographed had a reasonable expectation of privacy,
  5. without that person's consent.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of criminal invasion of privacy.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal invasion of privacy.**



## **UNLAWFUL DISTRIBUTION OF SUICIDE RECORDINGS**

### **COMMENT**

1. See § 18-7-801(1), C.R.S. 2019.

2. See Instruction F:186 (defining “intimate parts”); Instruction F:195 (defining “knowingly”); Instruction F:276.5 (defining “photograph” (criminal invasion of privacy)).

## **+ CHAPTER 7-9**

## **UNLAWFUL DISTRIBUTION OF SUICIDE RECORDINGS**

### **7-9:01**

#### **Posting an Image of Suicide of a Minor**

The elements of the crime of posting an image of suicide of a minor are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. posted or distributed through the use of social media or any website, or disseminated through other means,
5. an image of a minor attempting suicide, dying by suicide, or having died by suicide,
6. with the intent,
7. to harass, intimidate, or coerce any person, and
8. the posting or distribution resulted in serious emotional distress to any person, and
9. the defendant was the first or original person to post, distribute, or disseminate the image.

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- [10. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of posting an image of suicide of a minor.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of posting an image of suicide of a minor.

### COMMENT

1. See § 18-7-901(1), (2), C.R.S. 2019.
2. See Instruction F:176.5 (defining “image”); Instruction F:185 (defining “intentionally” or “with intent”); Instruction F:346.5 (defining “social media”); *see also* Instruction F:229.3 (defining “minor” for purposes of obscenity, which is also housed within article 7 of the Criminal Code (Offenses Relating to Morals)).
3. See Instruction H:49.9 (affirmative defense of “valid purpose”).
4. The statute provides that this offense is a civil infraction *except* when “the person was the first or original person to post, distribute, or disseminate the image,” in which case the offense becomes a class 3 misdemeanor. § 18-7-901(2). Because civil infractions do not require jury instructions, rather than creating a separate interrogatory, the Committee has simply incorporated this language into the elements of the crime.

## CHAPTER 8-1

### OBSTRUCTION OF PUBLIC JUSTICE

#### 8-1:01

#### Obstructing Governmental Operations

The elements of the crime of obstructing governmental operations are:

## OBSTRUCTION OF PUBLIC JUSTICE

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. obstructed, impaired, or hindered,
5. the performance of a governmental function by a public servant,
6. by using or threatening to use violence, force, or physical interference or obstacle.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of obstructing governmental operations.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of obstructing governmental operations.

### COMMENT

1. See § 18-8-102(1), C.R.S. 2019.

2. See Instruction F:165 (defining “governmental function”); Instruction F:185 (defining “intentionally”); Instruction F:306 (defining “public servant”).

3. See Instruction H:50 (affirmative defenses of “public servant,” “arrest,” and “labor dispute”).



8-1:02

**Resisting Arrest (Force or Violence)**

The elements of the crime of resisting arrest (force or violence) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. prevented or attempted to prevent a peace officer, acting under color of his [her] official authority, from effecting an arrest of the defendant or another,
5. by using or threatening to use physical force or violence against the peace officer or another.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of resisting arrest (force or violence).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of resisting arrest (force or violence).

**COMMENT**

1. See § 18-8-103(1)(a), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:264 (defining “peace officer”); Instruction F:377 (defining “under color of his [her] official authority”).

## OBSTRUCTION OF PUBLIC JUSTICE

3. See *People v. Fuller*, 781 P.2d 647, 650 (Colo. 1989) (“The general self-defense provision in section 18-1-704 therefore permits a person to defend himself when he reasonably believes that unreasonable or excessive force, as proscribed by section 18-1-707(1)(a), is being used by law enforcement officers or that its use is imminent. Section 18-8-103(2), concerning resisting arrest, simply establishes that this same rule applies when an arrest is unlawful, thus rejecting the common law tradition that a person could resist an unlawful arrest even when excessive force was not used.” (footnote omitted)).

4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

5. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 4.

### 8-1:03

#### Resisting Arrest (Any Means)

**The elements of the crime of resisting arrest are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. prevented or attempted to prevent a peace officer, acting under color of his [her] official authority, from effecting an arrest of the defendant or another,
5. using any means, other than using or threatening to use physical force or violence against the peace officer or another, which created a substantial risk of causing bodily injury to the peace officer or another.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

## COLORADO JURY INSTRUCTIONS—CRIMINAL

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of resisting arrest.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of resisting arrest.

### COMMENT

1. See § 18-8-103(1)(b), C.R.S. 2019.
2. See Instruction F:36 (defining “bodily injury”); Instruction F:195 (defining “knowingly”); Instruction F:264 (defining “peace officer”); Instruction F:377 (defining “under color of his [her] official authority”).
3. See Instruction 8-1:02, Comment 3 (discussing self-defense as an affirmative defense to a charge of resisting arrest).
4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).
5. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 4.

### 8-1:04.SP

#### **Resisting Arrest—Special Instruction (Unlawful Arrest Not a Defense)**

It is no defense to a charge of resisting arrest that the peace officer was attempting to make an arrest which in fact was unlawful, if he [she] was acting under color of his [her] official authority, and in attempting to make the arrest he [she] was not resorting to unreasonable or excessive force giving rise to the right of self-defense.

A peace officer acts “under color of his [her] of-



## OBSTRUCTION OF PUBLIC JUSTICE

official authority” when, in the regular course of assigned duties, he [she] is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by him [her].

### COMMENT

1. See § 18-8-103(2), C.R.S. 2019.

2. See *People v. Fuller*, 781 P.2d 647, 650 (Colo. 1989) (“The general self-defense provision in section 18-1-704 therefore permits a person to defend himself when he reasonably believes that unreasonable or excessive force, as proscribed by section 18-1-707(1)(a), is being used by law enforcement officers or that its use is imminent. Section 18-8-103(2), concerning resisting arrest, simply establishes that this same rule applies when an arrest is unlawful, thus rejecting the common law tradition that a person could resist an unlawful arrest even when excessive force was not used.” (footnote omitted)).

### 8-1:05

#### **Obstructing a Peace Officer, Firefighter, Emergency Medical Services Provider, Rescue Specialist, or Volunteer**

The elements of the crime of obstructing a [peace officer] [firefighter] [emergency medical services provider] [rescue specialist] [volunteer] are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. by using or threatening to use violence, force, physical interference, or an obstacle,
5. obstructed, impaired, or hindered,
6. the enforcement of the penal law or the preservation of the peace by a peace officer, acting under color of his [her] official authority; the

## COLORADO JURY INSTRUCTIONS—CRIMINAL

prevention, control, or abatement of fire by a firefighter, acting under color of his [her] official authority; the administration of medical treatment or emergency assistance by an emergency medical service provider or rescue specialist, acting under color of his [her] official authority; or the administration of emergency care or emergency assistance by a volunteer, acting in good faith to render such care or assistance without compensation at the place of an emergency or accident.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of obstructing a [peace officer] [firefighter] [emergency medical services provider] [rescue specialist] [volunteer].

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of obstructing a [peace officer] [firefighter] [emergency medical services provider] [rescue specialist] [volunteer].

### COMMENT

1. See § 18-8-104(1)(a), C.R.S. 2019.

2. See Instruction F:120 (defining “emergency medical service provider”); Instruction F:195 (defining “knowingly”); Instruction F:264 (defining “peace officer”); Instruction F:314 (defining “rescue specialist”); Instruction F:378 (defining “under color of his [her] official authority”); see also F:157 (defining “firefighter,” for purposes of assault offenses).

3. See Instruction H:50.5 (affirmative defense of “obtained permission”).

4. Compare *Dempsey v. People*, 117 P.3d 800, 811 (Colo. 2005) (evi-



## OBSTRUCTION OF PUBLIC JUSTICE

dence sufficient to support conviction for obstructing; “although mere verbal opposition alone may not suffice, a combination of statements and acts by the defendant, including threats of physical interference or interposition of an obstacle can form the crime of obstruction”), *with Kaufman v. Higgs*, 697 F.3d 1297, 1302 (10th Cir. 2012) (distinguishing *Dempsey*, and holding that defendant could not be arrested for obstructing merely because he simply refused to speak to a police officer).

5. In 2018, the Committee added Comment 3 pursuant to new legislation, and it renumbered the subsequent comment. *See* Ch. 385, sec. 2, § 18-8-104(2.5), 2018 Colo. Sess. Laws 2309, 2310.

8-1:06

### Obstructing a Peace Officer or Firefighter (Animal Used in Law Enforcement or Fire Prevention Activities)

The elements of the crime of obstructing a peace officer or firefighter (animal used in law enforcement or fire prevention activities) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. by using or threatening to use violence, force, physical interference, or an obstacle,
5. obstructed, impaired, or hindered,
6. any animal being used in law enforcement or fire prevention activities.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of obstructing a peace officer or firefighter



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(animal used in law enforcement or fire prevention activities).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of obstructing a peace officer or firefighter (animal used in law enforcement or fire prevention activities).

### COMMENT

1. See § 18-8-104(1)(b), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:264 (defining “peace officer”); see also F:157 (defining “firefighter,” for purposes of assault offenses).
3. See Instruction H:50.5 (affirmative defense of “obtained permission”).
4. In 2018, the Committee added Comment 3 pursuant to new legislation. See Ch. 385, sec. 2, § 18-8-104(2.5), 2018 Colo. Sess. Laws 2309, 2310.

### 8-1:07.SP

#### **Obstructing a Peace Officer—Special Instruction (Officer’s Illegal Action Not a Defense)**

It is not a defense to a charge of obstructing a peace officer that the peace officer was acting in an illegal manner, if he [she] was acting under color of his [her] official authority.

A peace officer acts “under color of his or her official authority” if, in the regular course of assigned duties, he [she] makes a judgment in good faith based on surrounding facts and circumstances that he [she] must act to enforce the law or preserve the peace.

### COMMENT

1. See § 18-8-104(2), C.R.S. 2019.
2. See *People v. Barrus*, 232 P.3d 264, 269 (Colo. App. 2009) (“self-

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defense is an available defense against the charge of obstructing a peace officer when a defendant reasonably believes that unreasonable or excessive force is being used by the peace officer"); *see also* *People v. Fuller*, 781 P.2d 647, 650 (Colo. 1989) ("The general self-defense provision in section 18-1-704 therefore permits a person to defend himself when he reasonably believes that unreasonable or excessive force, as proscribed by section 18-1-707(1)(a), is being used by law enforcement officers or that its use is imminent. Section 18-8-103(2), concerning resisting arrest, simply establishes that this same rule applies when an arrest is unlawful, thus rejecting the common law tradition that a person could resist an unlawful arrest even when excessive force was not used." (footnote omitted)).

**8-1:08**

### Accessory to Crime

**The elements of the crime of accessory to crime are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a crime,**
- 5. rendered assistance to the other person.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of accessory to crime.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**

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of the elements beyond a reasonable doubt, you should find the defendant not guilty of accessory to crime.

### COMMENT

1. See § 18-8-105(1), C.R.S. 2019.
2. See Instruction F:185 (defining “with intent”); Instruction F:311 (defining “render assistance”).
3. See *People v. Young*, 555 P.2d 1160, 1162 (Colo. 1976) (“The relevant standard for knowledge in regard to the accessory statute is whether defendant knew the principal had committed a crime. It is not necessary for the defendant to have known that the crime committed was of a particular class.”).
4. See *Barreras v. People*, 636 P.2d 686, 689 (Colo. 1981) (section 18-8-105 applies to crimes that are defined outside of the criminal code).

### 8-1:09.INT

#### **Accessory—Interrogatory (Knowledge of Class One or Two Felony Offense or Charge)**

If you find the defendant not guilty of accessory to crime, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of accessory to crime, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant know that the person had committed, been charged with, or been convicted of the crime[s] of [insert name(s) of class one or two felony offense(s); if more than one, list in the disjunctive]? (Answer “Yes” or “No”)**

The defendant knew that the person had committed, had been charged with, or had been convicted of the crime[s] of [insert name(s) of felony offense(s); if more than one, list in the disjunctive] only if:



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1. the defendant knew that the person being assisted had committed, or had been convicted of, or was charged by pending information, indictment, or complaint with the crime[s] of [insert name(s) of class one or two felony offense(s); if more than one, list in the disjunctive].

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-8-105(3), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

### 8-1:10.INT

#### **Accessory—Interrogatory (Knowledge That the Person Was Suspected of or Wanted for a Class One or Two Felony)**

If you find the defendant not guilty of accessory to crime, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of accessory to crime, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the defendant know that the person was

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suspected of or wanted for the crime[s] of [insert name(s) of class one or two felony offense(s); if more than one, list in the disjunctive]? (Answer “Yes” or “No”)

The defendant knew the person was a suspected of or wanted for the crime[s] of [insert name(s) of class one or two felony offense(s); if more than one, list in the disjunctive] only if:

1. the defendant knew that the person being assisted was suspected of or wanted for the crime[s] of [insert name of class one or two felony offense(s); if more than one, list in the disjunctive].

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-8-105(4), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

### 8-1:11.INT

**Accessory—Interrogatory (Knowledge of Felony Offense or Charge, or Knowledge That the Person Was Suspected of or Wanted for a Felony)**

If you find the defendant not guilty of accessory to crime, you should disregard this instruction and



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sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of accessory to crime, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the defendant know that the person had committed, been charged with, been convicted of, or was suspected or wanted for the crime[s] of [insert the name(s) of the relevant felony offense(s)]? (Answer “Yes” or “No”)

The defendant knew that the person had committed, been charged with, been convicted of, or was suspected or wanted for the crime[s] of [insert the name(s) of the relevant felony offense(s)] only if:

1. the defendant knew that the person being assisted had committed, or had been convicted of, or was charged by pending information, indictment, or complaint with, or was suspected or wanted for the crime[s] of [insert the name(s) of the relevant felony offense(s); if more than one, list in the disjunctive].

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.



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### COMMENT

1. See § 18-8-105(5), C.R.S. 2019 (being an accessory to any felony other than a class one or two felony is a class five felony, except that being an accessory to a class six felony is a class six felony).

2. See, e.g., Instruction E:28 (special verdict form).

3. This interrogatory is suitable for use with any charge of being an accessory to crime in violation of section 18-8-105(5). However, because the offense level for being an accessory to a class three, class four, or class five felony is different from the offense level for being an accessory to a class six felony, use a separate interrogatory for the determination with respect to a class six felony in any case where the defendant is charged with being an accessory *both* to a class six felony *and* to a class three, class four, or class five felony.

### 8-1:12.INT

#### **Accessory—Interrogatory (Knowledge of Misdemeanor Offense or Charge, or Knowledge That the Person Was Suspected of or Wanted for a Misdemeanor)**

If you find the defendant not guilty of accessory to crime, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of accessory to crime, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant know that the person had committed, been charged with, been convicted of, or was suspected or wanted for the crime[s] of [insert name(s) of misdemeanor offense(s); if more than one, list in the disjunctive]? (Answer “Yes” or “No”)**

**The defendant knew that the person had committed, been charged with, been convicted of, or was suspected or wanted for the crime[s] of [insert name(s) of misdemeanor offense(s); if more than one, list in the disjunctive] only if:**

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1. the defendant knew that the person being assisted had committed, or had been convicted of, or was charged by pending information, indictment, or complaint with, or was suspected or wanted for the crime[s] of [insert name(s) misdemeanor offense(s)]; if more than one, list in the disjunctive].

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-8-105(6), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

### 8-1:13

#### Refusal to Permit Inspection (Refusal to Produce or Make Available)

The elements of the crime of refusal to permit inspection (refusal to produce or make available) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing that a public servant was legally authorized to inspect property,



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**4. refused to produce or make available the property for inspection at a reasonable hour.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of refusal to permit inspection (refusal to produce or make available).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of refusal to permit inspection (refusal to produce or make available).**

**COMMENT**

1. See § 18-8-106(1)(a), C.R.S. 2019.

2. See Instruction F:290 (defining “property”); Instruction F:306 (defining “public servant”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Section 18-8-106(2), C.R.S. 2019, defines a “legally authorized inspection” as “any lawful search, sampling, testing, or other examination of property, in connection with the regulation of a business or occupation, that is authorized by statute or lawful regulatory provision.” Accordingly, in cases where there is a dispute concerning the lawfulness of the inspection, the court should resolve the issue(s) of law and draft a supplemental instruction explaining its conclusion(s).

**8-1:14**

**Refusal to Permit Inspection (Refusal When Available for Inspection)**

**The elements of the crime of refusal to permit inspection (refusal when available for inspection) are:**



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1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing that a public servant was legally authorized to inspect property,
4. when the property was available for inspection,
5. refused to permit the inspection of at a reasonable hour.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of refusal to permit inspection (refusal when available for inspection).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of refusal to permit inspection (refusal when available for inspection).

### COMMENT

1. See § 18-8-106(1)(b), C.R.S. 2019.

2. See Instruction F:290 (defining “property”); Instruction F:306 (defining “public servant”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Section 18-8-106(2), C.R.S. 2019, defines a “legally authorized inspection” as “any lawful search, sampling, testing, or other examina-

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tion of property, in connection with the regulation of a business or occupation, that is authorized by statute or lawful regulatory provision.” Accordingly, in cases where there is a dispute concerning the lawfulness of the inspection, the court should resolve the issue(s) of law and draft a supplemental instruction explaining its conclusion(s).

**8-1:15**

### **Refusing to Aid a Peace Officer**

**The elements of the crime of refusing to aid a peace officer are:**

- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. was eighteen years of age or older, and**
  - 4. was commanded, by a person known to him [her] to be a peace officer,**
  - 5. to aid the peace officer in effecting or securing an arrest or preventing the commission of any offense by another, and**
  - 6. unreasonably refused or failed to aid the peace officer.**
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of refusing to aid a peace officer.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of refusing to aid a peace officer.**

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### COMMENT

1. See § 18-8-107, C.R.S. 2019.
2. See Instruction F:263 (defining “peace officer”).

### 8-1:16

#### Compounding (Prosecution)

The elements of the crime of compounding (prosecution) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. accepted or agreed to accept,
4. any pecuniary benefit,
5. as consideration,
6. for refraining from seeking prosecution of an offender.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of compounding (prosecution).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of compounding (prosecution).

### COMMENT

1. See § 18-8-108(1)(a), C.R.S. 2019.



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2. See Instruction F:265.5 (defining “pecuniary benefit”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:51 (affirmative defense of “restitution or indemnification”).

4. The term “consideration” is not defined in section 18-8-108. See, e.g., *Black’s Law Dictionary* 370 (10th ed. 2014) (defining “consideration” as: “Something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee.”). The definition that appears in section 4-3-303(b), C.R.S. 2019, should not be used because it is limited to contracts.

### 8-1:17

#### Compounding (Reporting)

The elements of the crime of compounding (reporting) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. accepted or agreed to accept,
4. any pecuniary benefit,
5. as consideration for,
6. refraining from reporting to law enforcement authorities the commission or suspected commission of any crime or information relating to a crime.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements be-

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**yond a reasonable doubt, you should find the defendant guilty of compounding (reporting).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of compounding (reporting).**

### COMMENT

1. *See* § 18-8-108(1)(b), C.R.S. 2019.

2. *See* Instruction F:265.5 (defining “pecuniary benefit”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. *See* Instruction H:51 (affirmative defense of “restitution or indemnification”).

4. The term “consideration” is not defined in section 18-8-108. *See, e.g., Black’s Law Dictionary* 370 (10th ed. 2014) (defining “consideration” as: “Something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee.”). The definition that appears in section 4-3-303(b), C.R.S. 2019, should not be used because it is limited to contracts.

## 8-1:18

### Concealing Death

**The elements of the crime of concealing death are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. concealed the death of another person, [including a fetus born dead,] and**
- 4. thereby prevented a determination of the cause or circumstances of death.**

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[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of concealing death.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of concealing death.

### COMMENT

1. See § 18-8-109, C.R.S. 2019.

2. See Instruction F:20 (defining “another person”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 8-1:19

#### **False Report of Explosives, Weapons, or Harmful Substances**

The elements of the crime of false report of explosives, weapons, or harmful substances are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. reported to any other person that a bomb or other explosive, any chemical or biological agent, any poison or weapon, or any harmful radioactive substance had been placed in any public or private place or vehicle designed for the transportation of persons or property,



4. knowing that the report was false.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false report of explosives, weapons, or harmful substances.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false report of explosives, weapons, or harmful substances.

COMMENT

1. See § 18-8-110, C.R.S. 2019.

2. See Instruction F:38 (defining “bomb”); Instruction F:303 (defining “public place”).

8-1:20

**False Reporting to Authorities (Causing a False Alarm)**

The elements of the crime of false reporting to authorities (causing a false alarm) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. caused by any means, including but not limited to activation,
5. a false alarm of fire or other emergency or other a false emergency exit alarm to sound or to

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be transmitted to or within an official or volunteer fire department, ambulance service, law enforcement agency, or any other government agency which deals with emergencies involving danger to life or property.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false reporting to authorities (causing a false alarm).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false reporting to authorities (causing a false alarm).

### COMMENT

1. See § 18-8-111(1)(a)(I)(A), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. In 2018, the Committee modified the statutory citation in Comment 1 pursuant to a legislative amendment. See Ch. 401, sec. 1, § 18-8-111(1)(a)(I)(A), 2018 Colo. Sess. Laws 2370, 2370.

### 8-1:21.INT

#### **False Reporting to Authorities (Causing a False Alarm)— Interrogatory (During Commission of a Crime)**

If you find the defendant not guilty of false reporting to authorities (causing a false alarm), you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of false reporting to authorities (causing a false alarm), you



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should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Was the false reporting committed during another crime? (Answer “Yes” or “No”)**

**The false reporting was committed during another crime only if:**

1. the defendant committed the false reporting to authorities during the commission of [insert the name(s) of the other criminal offense(s) if alleged in the charging document; if not, use the statutory phrase: “another criminal offense”].

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. See § 18-8-111(1)(b), C.R.S. 2019 (specifying that this sentence enhancement provision applies only to violations of the false alarm provisions in section 18-8-111(1)(a)).

2. See, e.g., Instruction E:28 (special verdict form).

3. Although section 18-8-111(1)(b) does not require that the other criminal offense(s) be specified, the Committee recommends that the offense(s) be identified if named in the charging document.

4. In 2018, the Committee modified the statutory citations in Comments 1 and 3 pursuant to a legislative amendment. See Ch. 401, sec. 1, § 18-8-111(1)(b), 2018 Colo. Sess. Laws 2370, 2371.



8-1:22

**False Reporting to Authorities (Preventing Alarm)**

The elements of the crime of false reporting to authorities (preventing alarm) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. prevented by any means, including but not limited to deactivation,
  5. a legitimate fire alarm, emergency exit alarm, or other emergency alarm from sounding or from being transmitted to or within an official or volunteer fire department, ambulance service, law enforcement agency, or any other government agency that deals with emergencies involving danger to life or property.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false reporting to authorities (preventing alarm).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false reporting to authorities (preventing alarm).

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### COMMENT

1. See § 18-8-111(1)(a)(I)(B), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. In 2018, the Committee modified the statutory citation in Comment 1 pursuant to a legislative amendment. See Ch. 401, sec. 1, § 18-8-111(1)(a)(I)(B), 2018 Colo. Sess. Laws 2370, 2370.

### 8-1:23

#### **False Reporting to Authorities (Did Not Occur)**

**The elements of the crime of false reporting to authorities (did not occur) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. made a report or caused the transmission of a report to law enforcement authorities,**
- 5. of a crime or other incident within their official concern,**
- 6. when he [she] knew the crime or other incident did not occur.**

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false reporting to authorities (did not occur).**

**After considering all the evidence, if you decide**

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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false reporting to authorities (did not occur).**

### COMMENT

1. *See* § 18-8-111(1)(a)(II), C.R.S. 2019.
2. *See* Instruction F:195 (defining “knowingly”).
3. In 2018, the Committee modified the statutory citation in Comment 1 pursuant to a legislative amendment. *See* Ch. 401, sec. 1, § 18-8-111(1)(a)(II), 2018 Colo. Sess. Laws 2370, 2370.

### 8-1:24

#### **False Reporting to Authorities (Pretending)**

**The elements of the crime of false reporting to authorities (pretending) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. made a report or caused the transmission of a report to law enforcement authorities,
5. pretending to furnish information relating to an offense or other incident within their official concern,
6. when he [she] knew that he [she] had no such information, or knew that the information was false.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**



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the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false reporting to authorities (pretending).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false reporting to authorities (pretending).

### COMMENT

1. See § 18-8-111(1)(a)(III), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. In 2018, the Committee modified the statutory citation in Comment 1 pursuant to a legislative amendment. See Ch. 401, sec. 1, § 18-8-111(1)(a)(III), 2018 Colo. Sess. Laws 2370, 2371.

### 8-1:25

#### False Reporting to Authorities (False Identifying Information)

The elements of the crime of false reporting to authorities (false identifying information) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. provided false identifying information,
5. to law enforcement authorities.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide

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the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false reporting to authorities (false identifying information).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false reporting to authorities (false identifying information).

### COMMENT

1. See § 18-8-111(1)(a)(IV), C.R.S. 2019.

2. See Instruction F:175 (defining “identifying information”); Instruction F:195 (defining “knowingly”).

3. See also § 18-8-802(2), C.R.S. 2019 (false reporting to authorities—excessive force); § 18-9-209(3), C.R.S. 2019 (false reporting of animal cruelty).

4. In 2018, the Committee modified the statutory citation in Comment 1 pursuant to a legislative amendment. See Ch. 401, sec. 1, § 18-8-111(1)(a)(IV), 2018 Colo. Sess. Laws 2370, 2371.

### 8-1:25.2

#### False Reporting of an Emergency

The elements of the crime of false reporting of an emergency are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. committed an act that constituted [insert relevant offense from section 18-8-111(1)(a), C.R.S.], and
5. that act included a knowing false report of an

**imminent threat to the safety of a person or persons by use of a deadly weapon.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false reporting of an emergency.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false reporting of an emergency.**

#### COMMENT

1. See § 18-8-111(2)(a), C.R.S. 2019.

2. See Instruction F:88 (defining “deadly weapon”); Instruction F:195 (defining “knowingly”).

3. See Instruction 8-1:25.3.SP (lack of intent not a defense).

4. If the defendant is not separately charged with a false reporting offense under section 18-8-111(1)(a), the court should provide the jury with the elemental instruction for the relevant offense, omitting the two concluding paragraphs that explain the burden of proof. The court should place the elemental instruction for that offense immediately after the above instruction (or as close to it as practicable), and it should provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

5. The Committee added this instruction in 2018 pursuant to new legislation. See Ch. 401, sec. 1, § 18-8-111(2)(a), 2018 Colo. Sess. Laws 2370, 2371.

#### 8-1:25.3.SP

#### **False Reporting of an Emergency—Special Instruction**

**It is not a defense to a prosecution for false reporting of an emergency that the defendant or an-**



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**other person did not have the intent or capability of committing the threatened or reported act.**

**COMMENT**

1. *See* § 18-8-111(2)(d), C.R.S. 2019.

2. *See* Instruction F:185 (defining “with intent”).

3. The Committee added this instruction in 2018 pursuant to new legislation. *See* Ch. 401, sec. 1, § 18-8-111(2)(d), 2018 Colo. Sess. Laws 2370, 2371 to 72.

**8-1:25.4.INT**

**False Reporting of an Emergency—Interrogatory  
(Evacuation)**

**If you find the defendant not guilty of false reporting of an emergency, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of false reporting of an emergency, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the false reporting result in an evacuation?  
(Answer “Yes” or “No”)**

**The false reporting resulted in an evacuation only  
if:**

- 1. the defendant’s reported threat caused the occupants of a building, place of assembly, or facility of public transportation,**
- 2. to be evacuated or otherwise displaced.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide**

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the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-8-111(2)(b)(II)(A), C.R.S. 2019.

2. See Instruction F:40 (defining “building”); Instruction F:137 (defining “facility of public transportation”); see, e.g., Instruction E:28 (special verdict form).

3. The Committee added this instruction in 2018 pursuant to new legislation. See Ch. 401, sec. 1, § 18-8-111(2)(b)(II)(A), 2018 Colo. Sess. Laws 2370, 2371.

### 8-1:25.6.INT

#### False Reporting of an Emergency—Interrogatory (Bodily Injury)

If you find the defendant not guilty of false reporting of an emergency, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of false reporting of an emergency, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the false reporting result in injury? (Answer “Yes” or “No”)

The false reporting resulted in injury only if:

1. the defendant’s false reporting led to an emergency response, and

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2. that emergency response resulted in bodily injury of another person.

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

COMMENT

1. See § 18-8-111(2)(b)(II)(B), C.R.S. 2019.

2. See Instruction F:36 (defining “bodily injury”); see, e.g., Instruction E:28 (special verdict form).

3. The Committee added this instruction in 2018 pursuant to new legislation. See Ch. 401, sec. 1, § 18-8-111(2)(b)(II)(B), 2018 Colo. Sess. Laws 2370, 2371.

8-1:25.8.INT

**False Reporting of an Emergency—Interrogatory (Serious Bodily Injury)**

If you find the defendant not guilty of false reporting of an emergency, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of false reporting of an emergency, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:



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**Did the false reporting result in serious injury?  
(Answer “Yes” or “No”)**

**The false reporting resulted in serious injury only  
if:**

- 1. the defendant’s false reporting led to an emergency response, and**
- 2. that emergency response resulted in serious bodily injury of another person.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. *See* § 18-8-111(2)(b)(III), C.R.S. 2019.

2. *See* Instruction F:332 (defining “serious bodily injury”); *see, e.g.*, Instruction E:28 (special verdict form).

3. The Committee added this instruction in 2018 pursuant to new legislation. *See* Ch. 401, sec. 1, § 18-8-111(2)(b)(III), 2018 Colo. Sess. Laws 2370, 2371.

### 8-1:25.9.INT

#### **False Reporting of an Emergency—Interrogatory (Death)**

**If you find the defendant not guilty of false reporting of an emergency, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

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If, however, you find the defendant guilty of false reporting of an emergency, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the false reporting result in death? (Answer “Yes” or “No”)**

**The false reporting resulted in serious injury only if:**

- 1. the defendant’s false reporting led to an emergency response, and**
- 2. that emergency response resulted in the death of another person.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

- 1. See § 18-8-111(2)(b)(IV), C.R.S. 2019.*
- 2. See, e.g., Instruction E:28 (special verdict form).*
- 3. The Committee added this instruction in 2018 pursuant to new legislation. See Ch. 401, sec. 1, § 18-8-111(2)(b)(IV), 2018 Colo. Sess. Laws 2370, 2371.*

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**8-1:26**

### **Impersonating a Peace Officer**

**The elements of the crime of impersonating a peace officer are:**

- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. falsely pretended to be a peace officer, and**
  - 4. performed an act in that pretended capacity.**
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of impersonating a peace officer.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of impersonating a peace officer.**

#### **COMMENT**

- 1. See § 18-8-112(1), C.R.S. 2019.**
- 2. See Instruction F:263 (defining "peace officer").**

**8-1:27**

### **Impersonating a Public Servant**

**The elements of the crime of impersonating a public servant are:**



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- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. falsely pretended to be a public servant, other than a peace officer, and**
  - 4. performed any act in that pretended capacity.**
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of impersonating a public servant.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of impersonating a public servant.**

**COMMENT**

1. See § 18-8-113(1), C.R.S. 2019.
2. See Instruction F:263 (defining “peace officer”); Instruction F:306 (defining “public servant”).

**8-1:28.SP**

**Impersonating a Public Servant—Special Instruction  
(Fictitious Office)**

**It is no defense to a charge of impersonating a public servant that the office the defendant pretended to hold did not in fact exist.**

**COMMENT**

1. See § 18-8-113(2), C.R.S. 2019.

8-1:29

**Abuse of Public Records (Falsity)**

The elements of the crime of abuse of public records (falsity) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. made a false entry in or falsely altered any public record.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of public records (falsity).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of public records (falsity).

**COMMENT**

1. See § 18-8-114(1)(a), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:304 (defining “public record”).

8-1:30

**Abuse of Public Records (Impairment)**

The elements of the crime of abuse of public records (impairment) are:

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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowing that he [she] lacked the authority to do so,
  4. knowingly,
  5. destroyed, mutilated, concealed, removed, or impaired the availability of any public record.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of public records (impairment).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of public records (impairment).

**COMMENT**

1. See § 18-8-114(1)(b), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:304 (defining “public record”).

**8-1:31**

**Abuse of Public Records (Refusal)**

The elements of the crime of abuse of public records (refusal) are:

1. That the defendant,



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2. in the State of Colorado, at or about the date and place charged,

3. knowing that he [she] lacked the authority to retain the record,

4. refused to deliver up a public record in his [her] possession upon proper request of any person lawfully entitled to receive such record.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of public records (refusal).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of public records (refusal).

### COMMENT

1. See § 18-8-114(1)(c), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”); Instruction F:304 (defining “public record”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 8-1:32

#### Abuse of Public Records (Alteration)

The elements of the crime of abuse of public records (alteration) are:

1. That the defendant,

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**2. in the State of Colorado, at or about the date and place charged,**

**3. knowing that he [she] had not been authorized by the custodian of the public record to do so,**

**4. knowingly,**

**5. altered any public record.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of public records (alteration).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of public records (alteration).**

**COMMENT**

*1. See § 18-8-114(1)(d), C.R.S. 2019.*

*2. See Instruction F:195 (defining “knowingly”); Instruction F:304 (defining “public record”).*

**8-1:33**

**Disarming a Peace Officer**

**The elements of the crime of disarming a peace officer are:**

**1. That the defendant,**

**2. in the State of Colorado, at or about the date and place charged,**

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3. knowingly,
4. without justification, and
5. without consent,
6. removed the firearm or self-defense electronic control device, direct-contact stun device, or other similar device,
7. of a peace officer,
8. who was acting under color of his [her] official authority.

[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of disarming a peace officer.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of disarming a peace officer.

### COMMENT

1. See § 18-8-116(1), C.R.S. 2019.

2. See Instruction F:265 (defining "peace officer"); see also Instruction F:378 (defining "under color of his [her] official authority" for purposes of the offense of obstructing a peace officer).

3. See *People v. Fuller*, 781 P.2d 647, 651 (Colo. 1989) (the defense of self-defense applies to the offense of attempting to disarm a peace officer).



8-1:34

**Unlawful Sale of Public Services (Sale)**

The elements of the crime of unlawful sale of public services (sale) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. reserved or obtained a government service or an appointment to receive a government service, and
4. sold the service or appointment, and
5. a government entity made the service or appointment publicly available without charge.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful sale of public services (sale).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful sale of public services (sale).

**COMMENT**

1. See § 18-8-117(1)(a), C.R.S. 2019.

2. See Instruction F:164.5 (defining “government entity”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense,

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or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:51.5 (affirmative defense of “lawful purpose”).

4. The Committee added this instruction in 2016 pursuant to new legislation. See Ch. 246, sec. 1, § 18-8-117(1)(a), 2016 Colo. Sess. Laws 1014, 1014.

### 8-1:35

#### Unlawful Sale of Public Services (Intent to Sell)

The elements of the crime of unlawful sale of public services (intent to sell) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. with the intent,
  4. to sell a government service or an appointment to receive a government service,
  5. reserved or obtained the service or appointment, and
  6. a government entity made the service or appointment publicly available without charge.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful sale of public services (intent to sell).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more

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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful sale of public services (intent to sell).**

**COMMENT**

1. *See* § 18-8-117(1)(b), C.R.S. 2019.
2. *See* Instruction F:164.5 (defining “government entity”); Instruction F:185 (defining “with intent”).
3. *See* Instruction H:51.5 (affirmative defense of “lawful purpose”).
4. The Committee added this instruction in 2016 pursuant to new legislation. *See* Ch. 246, sec. 1, § 18-8-117(1)(b), 2016 Colo. Sess. Laws 1014, 1014.

**8-1:36**

**Unlawful Sale of Public Services (Append Service)**

**The elements of the crime of unlawful sale of public services (append service) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. reserved or obtained a government service or an appointment to receive a government service, and
4. appended the service or appointment to another good or service he [she] offered for sale, and
5. a government entity made the service or appointment publicly available without charge.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**



the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful sale of public services (append service).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful sale of public services (append service).

# COMMENT

1. See § 18-8-117(1)(c), C.R.S. 2019.

2. See Instruction F:164.5 (defining “government entity”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:51.5 (affirmative defense of “lawful purpose”).

4. The Committee added this instruction in 2016 pursuant to new legislation. *See* Ch. 246, sec. 1, § 18-8-117(1)(c), 2016 Colo. Sess. Laws 1014, 1014.

## 8-1:37

### Unlawful Sale of Public Services (False Representation)

The elements of the crime of unlawful sale of public services (false representation) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. falsely represented to a potential customer that the defendant had obtained or secured a government service or an appointment to receive a government service, and

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4. attempted to sell the service or appointment, and

5. a government entity made the service or appointment publicly available without charge.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful sale of public services (false representation).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful sale of public services (false representation).

COMMENT

1. See § 18-8-117(1)(d), C.R.S. 2019.

2. See Instruction F:164.5 (defining “government entity”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:51.5 (affirmative defense of “lawful purpose”).

4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

5. The Committee added this instruction in 2016 pursuant to new legislation. See Ch. 246, sec. 1, § 18-8-117(1)(d), 2016 Colo. Sess. Laws 1014, 1014.

**ESCAPE AND OFFENSES RELATING TO CUSTODY**

**CHAPTER 8-2**

**ESCAPE AND OFFENSES RELATING TO  
CUSTODY**

**8-2:01**

**Aiding Escape**

**The elements of the crime of aiding escape are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. aided, abetted, or assisted another person to escape, or to attempt to escape, from custody or confinement.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aiding escape.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aiding escape.**

**COMMENT**

**1. See § 18-8-201(1), C.R.S. 2019.**

**2. See Instruction F:23 (defining “assist” by referring to the definition of “render assistance” in Instruction F:311); Instruction F:129 (defining “escape” for purposes of this offense); Instruction F:195 (defining “knowingly”).**



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3. The penalty provisions of section 18-8-201(4) to (6), C.R.S. 2019, are based on the level of offense for which the defendant was held or convicted. This determination is a matter of law for the court to resolve.

4. In the absence of case law on point, the Committee takes no position on whether the word “attempt” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

5. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 4.

### 8-2:02

#### **Aiding Escape From an Institution for the Care and Treatment of Persons With Behavioral or Mental Health Disorders**

The elements of the crime of aiding escape from an institution for the care and treatment of persons with behavioral or mental health disorders are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. aided the escape of a person who was an inmate of an institution for the care and treatment of persons with behavioral or mental health disorders, and
5. knew that the person aided was confined in the institution pursuant to a commitment pursuant to [insert the name of the relevant type of insanity or incompetency proceeding from Article 8 of Title 16].

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aiding escape from an institution for the care and treatment of persons with behavioral or mental health disorders.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aiding escape from an institution for the care and treatment of persons with behavioral or mental health disorders.

### COMMENT

1. See § 18-8-201.1, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:226.5 (defining “mental health disorder”).

3. In 2017, pursuant to a legislative amendment, the Committee changed the phrase “mental illness” to “behavioral or mental health disorders,” and it added a cross-reference to Instruction F:226.5 in Comment 2. See Ch. 263, sec. 143, § 18-8-201.1, 2017 Colo. Sess. Laws 1249, 1307 to 08.

### 8-2:03

#### Inducing Prisoners to Absent Selves

The elements of the crime of inducing prisoners to absent selves are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. invited, enticed, solicited, or induced any prisoner in custody or confinement to absent himself [herself] from his [her] work, or substantially delayed or hindered a prisoner in his [her] work.

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**[4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of inducing prisoners to absent selves.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inducing prisoners to absent selves.**

**COMMENT**

1. *See* § 18-8-202, C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 ("Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.").

**8-2:04**

**Introducing Contraband in the First Degree (Introduction Into)**

**The elements of the crime of introducing contraband in the first degree (introduction into) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly and unlawfully,**
- 4. introduced, or attempted to introduce, a dangerous instrument, malt, vinous, or spirituous liquor, fermented malt beverage, controlled substance, or marijuana or marijuana concentrate,**



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**5. into a detention facility or at any location where an inmate was or was likely to be located,**

**6. while the inmate was in the custody and under the jurisdiction of a political subdivision of the state of Colorado or the department of corrections, but not on parole.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of introducing contraband in the first degree (introduction into).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of introducing contraband in the first degree (introduction into).**

### COMMENT

1. *See* § 18-8-203(1)(a), C.R.S. 2019.

2. *See* Instruction F:69 (defining “contraband”); Instruction F:85 (defining “dangerous instrument”); Instruction F:96 (defining “detention facility”); Instruction F:148 (defining “fermented malt beverage”); Instruction F:195 (defining “knowingly”); Instruction F:205 (defining “malt liquor”); Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); Instruction F:390 (defining “vinous liquors”).

3. *See* *People v. Iversen*, 2013 COA 40, ¶ 25, 321 P.3d 573, 578 (“[W]e interpret section 18-8-203 as requiring only that a defendant know that he or she is introducing, or attempting to introduce, contraband into the detention facility; he or she need not know, in addition, that his or her conduct in introducing, or attempting to introduce, contraband into the detention facility, is unlawful (i.e., without legal excuse, justification, or authorization).”).

4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the

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inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

5. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 4.

### **8-2:05**

#### **Introducing Contraband in the First Degree (Making While Confined)**

**The elements of the crime of introducing contraband in the first degree (making while confined) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly and unlawfully,**
- 4. while confined in a detention facility,**
- 5. made any dangerous instrument, controlled substance, marijuana, or marijuana concentrate, or alcohol.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of introducing contraband in the first degree (making while confined).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of introducing**



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**contraband in the first degree (making while confined).**

### COMMENT

1. See § 18-8-203(1)(b), C.R.S. 2019.

2. See Instruction F:85 (defining “dangerous instrument”); Instruction F:96 (defining “detention facility”); Instruction F:195 (defining “knowingly”); Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”).

3. + See *People v. Jamison*, 2018 COA 121, ¶ 49, 436 P.3d 569, 578 (holding that first-degree possession of contraband is a lesser included offense of first-degree introducing contraband by making).

4. + In 2019, the Committee added Comment 3.

### 8-2:06

#### **Introducing Contraband in the Second Degree (Introduction Into)**

**The elements of the crime of introducing contraband in the second degree (introduction into) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unlawfully,
4. introduced or attempted to introduce contraband,
5. into a detention facility.

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-**



**dant guilty of introducing contraband in the second degree (introduction into).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of introducing contraband in the second degree (introduction into).**

**COMMENT**

1. *See* § 18-8-204(1)(a), C.R.S. 2019.

2. *See* Instruction F:70 (defining “contraband”); Instruction F:96 (defining “detention facility”); Instruction F:195 (defining “knowingly”).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

4. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 3.

**8-2:07**

**Introducing Contraband in the Second Degree (Making While Confined)**

**The elements of the crime of introducing contraband in the second degree (making while confined) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly and unlawfully,**
- 4. while confined in a detention facility,**
- 5. made any contraband.**
- [6. and that the defendant’s conduct was not**

legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of introducing contraband in the second degree (making while confined).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of introducing contraband in the second degree (making while confined).

COMMENT

1. See § 18-8-204(1)(b), C.R.S. 2019.

2. See Instruction F:70 (defining “contraband”); Instruction F:96 (defining “detention facility”); Instruction F:195 (defining “knowingly”).

8-2:08

**Introducing Contraband in the Second Degree  
(Introducing While Confined)**

The elements of the crime of introducing contraband in the second degree (introducing while confined) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unlawfully,
4. while confined in a detention facility,
5. introduced or attempted to introduce contraband into a detention facility or at any location where an inmate was likely to be located,

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6. while such inmate was in the custody and under the jurisdiction of a political subdivision of the state of Colorado or the department of corrections, but not on parole.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of introducing contraband in the second degree (introducing while confined).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of introducing contraband in the second degree (introducing while confined).

### COMMENT

1. See § 18-8-204(1.5) C.R.S. 2019.

2. See Instruction F:70 (defining “contraband”); Instruction F:96 (defining “detention facility”); Instruction F:195 (defining “knowingly”).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

4. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 3.

**8-2:09**

### Possession of Contraband in the First Degree

The elements of the crime of possession of contraband in the first degree are:



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1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. while confined in a detention facility,
4. knowingly,
5. obtained or had in his [her] possession contraband or alcohol.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of contraband in the first degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of contraband in the first degree.

### COMMENT

1. See § 18-8-204.1, C.R.S. 2019.

2. See Instruction F:69 (defining “contraband”); Instruction F:96 (defining “detention facility”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

3. Although section 18-8-204.1 incorporates the definition of contraband in section 18-8-203(1)(a), the definition based on that section that appears in Instruction F:69 must be modified when it is used for this offense because the definition includes a “controlled substance,” whereas section 18-8-204.1 specifically excludes “contraband specified in section 18-18-405” (unlawful distribution, manufacturing, dispensing or sale of a controlled substance).

4. + See *People v. Jamison*, 2018 COA 121, ¶ 49, 436 P.3d 569, 578

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(holding that first-degree possession of contraband is a lesser included offense of first-degree introducing contraband by making).

5. + In 2019, the Committee added Comment 4.

### **8-2:10.INT**

#### **Possession of Contraband in the First Degree— Interrogatory (Dangerous Instrument)**

If you find the defendant not guilty of possession of contraband in the first degree (dangerous instrument), you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of possession of contraband in the first degree (dangerous instrument), you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Was the contraband a dangerous instrument?  
(Answer “Yes” or “No”)**

**The contraband was a dangerous instrument only  
if:**

**1. the contraband was a firearm, explosive device or substance (including ammunition), knife or sharpened instrument, poison, acid, bludgeon, or projective device, or any other device, instrument, material, or substance which was readily capable of causing or inducing fear of death or bodily injury, the use of which was not specifically authorized.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

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After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See §§ 18-8-203(4), 18-8-204.1(2), (3), C.R.S. 2019.

2. See Instruction F:85 (defining “dangerous instrument”); *see, e.g.*, Instruction E:28 (special verdict form).

### 8-2:11

#### Possession of Contraband in the Second Degree

The elements of the crime of possession of contraband in the second degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. while confined in a detention facility,
4. knowingly,
5. obtained or possessed contraband.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of contraband in the second degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you



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**should find the defendant not guilty of possession of contraband in the second degree.**

### COMMENT

1. See § 18-8-204.2(1), C.R.S. 2019.

2. See Instruction F:70 (defining “contraband”); Instruction F:96 (defining “detention facility”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

3. Section 18-8-204.2(1) excludes possession that “is authorized by rule or regulation promulgated by the administrative head of the detention facility.” However, the Committee has not drafted a model affirmative defense instruction. In a case where there is a dispute concerning whether the possession was “authorized,” the court may be able to resolve this issue as a matter of law and provide the jury with a supplemental instruction explaining its determination. However, if the issue of law turns on a factual issue, the factual question must be submitted to the jury by means of an interrogatory.

## 8-2:12

### Aiding Escape From Civil Process

**The elements of the crime of aiding escape from civil process are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. aided, abetted, or assisted,
4. the escape of a person,
5. who was in legal custody under civil process.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide the prosecution has proven each of the elements be-**

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**yond a reasonable doubt, you should find the defendant guilty of aiding escape from civil process.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aiding escape from civil process.**

### COMMENT

1. See § 18-8-205, C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

## 8-2:13

### Assault During Escape

**The elements of the crime of assault during escape are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was confined in any lawful place of confinement within the state, and**
- 4. while escaping or attempting to escape,**
- 5. committed an assault,**
- 6. with intent,**
- 7. to commit bodily injury upon the person of another,**

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**8. with a deadly weapon, or by any means of force likely to produce serious bodily injury.**

**[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of assault during escape.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of assault during escape.**

### COMMENT

1. *See* § 18-8-206(1), C.R.S. 2019.

2. *See* Instruction F:36 (defining “bodily injury”); Instruction F:88 (defining “deadly weapon”); Instruction F:185 (defining “with intent”); Instruction F:332 (defining “serious bodily injury”); Instruction 8-2:15 (escape).

3. The felony classification levels for this offense are based on the classification level of the underlying offense for which the defendant was being held. *See* § 18-8-206(1)(a) to (d), C.R.S. 2019; *see also* § 18-8-210, C.R.S. 2019 (persons in custody or confinement for unclassified offenses). This determination is a matter of law for the court to resolve. *See Massey v. People*, 649 P.2d 1070 (Colo. 1982) (“The classification of the defendant’s past offense was a question of law, and the court is justified in taking judicial notice when the facts upon which the legal conclusion is based are unchallenged.”). However, “[e]vidence of a prior conviction is an essential element of the offense of escape.” *People v. McKnight*, 626 P.2d 678, 683 (Colo. 1981).

4. In the absence of case law on point, the Committee takes no position on whether the word “attempting” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

5. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 4.



8-2:14

### Holding Hostages

The elements of the crime of holding hostages are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was in lawful custody or confinement within the state, and
4. while escaping or attempting to escape,
5. held any person hostage or by force or threat of force held any person against his [her] will.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of holding hostages.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of holding hostages.

### COMMENT

1. See § 18-8-207, C.R.S. 2019.

2. See *People v. Williams*, 611 P.2d 973, 975 (Colo. 1980) ("The crime of 'holding hostages' includes as an essential element the general intent crime of 'escape.' No additional mental state is specified for the crime of 'holding hostages.' That crime, as well as the crime of 'escape,' is one of general rather than specific intent.").

3. In a case where there is a dispute concerning whether the

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“custody or confinement” was “lawful,” the court should resolve this question of law and provide the jury with a supplemental instruction explaining its determination. However, if the issue of law turns on a factual question, the factual determination must be submitted to the jury by means of an interrogatory.

4. In the absence of case law on point, the Committee takes no position on whether the word “attempting” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

5. In 2015, the Committee removed Comment 2 (which had cited to Instruction G2:01), renumbered the subsequent comments, and added Comment 4.

### **8-2:15**

#### **Escape (Following Conviction)**

**The elements of the crime of escape (following conviction) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was in custody or confinement,**
- 4. following conviction for the crime of [insert name of offense(s)], and**
- 5. knowingly,**
- 6. escaped from custody or confinement.**

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of escape (following conviction).**

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of escape (following conviction).**

### COMMENT

1. *See* § 18-8-208(1), (2), (4), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”).

3. The felony classification levels for this offense are based on the classification level of the underlying offense for which the defendant was being held. *See* § 18-8-208(1), (2), (4), C.R.S. 2019; *see also* § 18-8-210, C.R.S. 2019 (persons in custody or confinement for unclassified offenses). This determination is a matter of law for the court to resolve. *See Massey v. People*, 649 P.2d 1070 (Colo. 1982) (“The classification of the defendant’s past offense was a question of law, and the court is justified in taking judicial notice when the facts upon which the legal conclusion is based are unchallenged.”). However, “[e]vidence of a prior conviction is an essential element of the offense of escape.” *People v. McKnight*, 626 P.2d 678, 683 (Colo. 1981).

4. *See People v. Benzor*, 100 P.3d 542, 543 (Colo. App. 2004) (“the placement of the mental state ‘knowingly’ after the element of ‘following a conviction of a felony’ and before the element of ‘escapes from custody or confinement’ evidences the General Assembly’s intent to limit the culpable mental state only to the conduct element of the offense”).

5. Section 18-8-208(11), C.R.S. 2019, which was enacted in 2013, provides as follows: “A person who is placed in a community corrections program for purposes of obtaining residential treatment as a condition of probation pursuant to section 18-1.3-204(2.2) or 18-1.3-301(4)(b) is not in custody or confinement for purposes of this section.” It appears that the question of whether this section applies to a particular defendant is a matter of law for the court to resolve. Therefore, the Committee has not drafted a special instruction to explain the concept to the jury.

### 8-2:16

#### Escape (Held or Charged)

**The elements of the crime of escape (held or charged) are:**

1. That the defendant,



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- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was in custody or confinement,**
- 4. while being held for or charged with, but not convicted of [insert name(s) of offense(s)], and**
- 5. knowingly,**
- 6. escaped from custody or confinement.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of escape (held or charged).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of escape (held or charged).**

**COMMENT**

1. *See* § 18-8-208(3), (5), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”).

3. The classification levels for this offense are based on the classification level of the underlying offense for which the defendant was being held. *See* § 18-8-208(3), (5) C.R.S. 2019; *see also* § 18-8-210, C.R.S. 2019 (persons in custody or confinement for unclassified offenses). This determination is a matter of law for the court to resolve. *See* *Massey v. People*, 649 P.2d 1070 (Colo. 1982) (“The classification of the defendant’s past offense was a question of law, and the court is justified in taking judicial notice when the facts upon which the legal conclusion is based are unchallenged.”). However, “[e]vidence of a prior conviction is an essential element of the offense of escape.” *People v. McKnight*, 626 P.2d 678, 683 (Colo. 1981).

4. *See also* *People v. Benzor*, 100 P.3d 542, 543 (Colo. App. 2004)

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(“the placement of the mental state ‘knowingly’ after the element of ‘following a conviction of a felony’ and before the element of ‘escapes from custody or confinement’ evidences the General Assembly’s intent to limit the culpable mental state only to the conduct element of the offense”).

5. See *People v. Thornton*, 929 P.2d 729, 733 (Colo. 1996) (“effecting an arrest, in the sense of establishing physical control over the arrestee, is required before a person is ‘in custody’ for the purposes of [section 18-8-208(3) of] the escape statute”).

6. Section 18-8-208(11), C.R.S. 2019, which was enacted in 2013, provides as follows: “A person who is placed in a community corrections program for purposes of obtaining residential treatment as a condition of probation pursuant to section 18-1.3-204(2.2) or 18-1.3-301(4)(b) is not in custody or confinement for purposes of this section.” It appears that the question of whether this section applies to a particular defendant is a matter of law for the court to resolve. Therefore, the Committee has not drafted a special instruction to explain the concept to the jury.

### 8-2:17

#### Escape (Staff Secure Facility)

The elements of the crime of escape (staff secure facility) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. had been committed to the division of youth services in the department of human services for a delinquent act, and
4. was over eighteen years of age, and
5. escaped from a staff secure facility, other than a state-operated locked facility.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of escape (staff secure facility).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of escape (staff secure facility).

COMMENT

1. See § 18-8-208(4.5), C.R.S. 2019.
2. See Instruction F:352 (defining “staff secure facility”).
3. Section 18-8-208(4.5), enacted in 2013, is the only provision of the escape statute that does not include as an element the mens rea of “knowingly.” *See generally* People v. Lanzieri, 25 P.3d 1170, 1172 (Colo. 2001) (“Thus, the crime of escape consists of the following essential elements: (1) a voluntary act; (2) which constitutes a departure from one of the forms of lawful custody or confinement specified in the escape statute; (3) by a prisoner; and (4) committed ‘knowingly,’ i.e., with an awareness on the part of the prisoner that his or her conduct is of the nature proscribed.”). Although the model instruction tracks the language of the statute, it may be appropriate to impute a mens rea. *See* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).
4. In 2017, the Committee changed the phrase “youth corrections” to “youth services” pursuant to a legislative amendment. *See* Ch. 381, sec. 26, § 18-8-208(4.5), 2017 Colo. Sess. Laws 1954, 1972.

8-2:18

Escape (Commitment)

The elements of the crime of escape (commitment) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,



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3. while being confined pursuant to a[n] [insert the name of the relevant type of insanity or incompetency proceeding from Article 8 of Title 16] commitment that had been ordered at a proceeding in which the defendant had been charged with [insert name of offense(s)], and

4. knowingly,

5. escaped from confinement.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of escape (commitment).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of escape (commitment).

### COMMENT

1. See § 18-8-208(6), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. The classification levels for this offense are based on the classification level of the underlying offense for which the defendant was being held. See § 18-8-208(6)(a) to (c), C.R.S. 2019; see also § 18-8-210, C.R.S. 2019 (persons in custody or confinement for unclassified offenses). This determination is a matter of law for the court to resolve. See *Massey v. People*, 649 P.2d 1070 (Colo. 1982) (“The classification of the defendant’s past offense was a question of law, and the court is justified in taking judicial notice when the facts upon which the legal conclusion is based are unchallenged.”). However, “[e]vidence of a prior conviction is an essential element of the offense of escape.” *People v. McKnight*, 626 P.2d 678, 683 (Colo. 1981).

4. See also *People v. Benzor*, 100 P.3d 542, 543 (Colo. App. 2004) (“the placement of the mental state ‘knowingly’ after the element of ‘fol-

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lowing a conviction of a felony’ and before the element of ‘escapes from custody or confinement’ evidences the General Assembly’s intent to limit the culpable mental state only to the conduct element of the offense”).

5. See Instruction H:52 (defining the affirmative defense of “voluntary return,” which is available only as against a charge of escape from commitment in violation of section 18-8-208(6)).

6. Section 18-8-208(11), C.R.S. 2019, which was enacted in 2013, provides as follows: “A person who is placed in a community corrections program for purposes of obtaining residential treatment as a condition of probation pursuant to section 18-1.3-204(2.2) or 18-1.3-301(4)(b) is not in custody or confinement for purposes of this section.” It appears that the question of whether this section applies to a particular defendant is a matter of law for the court to resolve. Therefore, the Committee has not drafted a special instruction to explain the concept to the jury.

### 8-2:19.INT

#### **Escape (Commitment)—Interrogatory (Leaving Colorado)**

**If you find the defendant not guilty of escape (commitment), you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of escape (commitment), you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the defendant leave Colorado? (Answer “Yes” or “No”)**

**The defendant left Colorado only if:**

- 1. in the escape the defendant traveled outside of Colorado.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark**

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**“Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. *See* § 18-8-208(6), C.R.S. 2019.
2. *See, e.g.*, Instruction E:28 (special verdict form).

### 8-2:20

#### Escape (Extradition)

**The elements of the crime of escape (extradition) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was in custody or confinement,
4. pursuant to [insert a description of the relevant fugitive extradition proceeding, from Article 19 of Title 16], and
5. knowingly,
6. escaped from custody or confinement.

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements be-**



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yond a reasonable doubt, you should find the defendant guilty of escape (extradition).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of escape (extradition).

### COMMENT

1. *See* § 18-8-208(8), C.R.S. 2019.
2. *See* Instruction F:195 (defining “knowingly”).
3. *See also* *People v. Benzor*, 100 P.3d 542, 543 (Colo. App. 2004) (“the placement of the mental state ‘knowingly’ after the element of ‘following a conviction of a felony’ and before the element of ‘escapes from custody or confinement’ evidences the General Assembly’s intent to limit the culpable mental state only to the conduct element of the offense”).
4. *See* *People v. Thornton*, 929 P.2d 729, 733 (Colo. 1996) (“effecting an arrest, in the sense of establishing physical control over the arrestee, is required before a person is ‘in custody’ for the purposes of the escape statute”).
5. Section 18-8-208(11), C.R.S. 2019, which was enacted in 2013, provides as follows: “A person who is placed in a community corrections program for purposes of obtaining residential treatment as a condition of probation pursuant to section 18-1.3-204(2.2) or 18-1.3-301(4)(b) is not in custody or confinement for purposes of this section.” It appears that the question of whether this section applies to a particular defendant is a matter of law for the court to resolve. Therefore, the Committee has not drafted a special instruction to explain the concept to the jury.

### 8-2:21

#### Attempt to Escape (Following Conviction)

The elements of the crime of attempt to escape (following conviction) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

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3. was in custody or confinement,
4. following conviction of [insert name(s) of offense(s)], and
5. knowingly,
6. attempted to escape from custody or confinement.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of attempt to escape (following conviction).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of attempt to escape (following conviction).

### COMMENT

1. See § 18-8-208.1(1), (3), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction G2:01 (criminal attempt).

3. See also *People v. Benzor*, 100 P.3d 542, 543 (Colo. App. 2004) (“the placement of the mental state ‘knowingly’ after the element of ‘following a conviction of a felony’ and before the element of ‘escapes from custody or confinement’ evidences the General Assembly’s intent to limit the culpable mental state only to the conduct element of the offense”).

### 8-2:22

#### **Attempt to Escape (Following Conviction; Community Corrections or Intensive Supervision Parole)**

**The elements of the crime of attempt to escape**

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**(following conviction; community corrections or intensive supervision parole) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was in custody or confinement,**
- 4. following conviction of [insert name of felony offense(s)], and**
- 5. was serving a direct sentence to a community corrections program, or had been placed in an intensive supervision parole program, and**
- 6. knowingly,**
- 7. attempted to escape from custody or confinement.**
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of attempt to escape (following conviction; community corrections or intensive supervision parole).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of attempt to escape (following conviction; community corrections or intensive supervision parole).**

**COMMENT**

- 1. See § 18-8-208.1(1.5), C.R.S. 2019.**



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2. See Instruction F:195 (defining “knowingly”); Instruction G2:01 (criminal attempt).

3. Although this offense requires that the defendant have been convicted of “a felony,” do not label the conviction as a felony when identifying it for the jury.

4. See also *People v. Benzor*, 100 P.3d 542, 543 (Colo. App. 2004) (“the placement of the mental state ‘knowingly’ after the element of ‘following a conviction of a felony’ and before the element of ‘escapes from custody or confinement’ evidences the General Assembly’s intent to limit the culpable mental state only to the conduct element of the offense”).

5. The terms “community corrections program” and “intensive supervision parole program” are not defined in Article 8. See § 17-27-102(3), C.R.S. 2019 (“‘Community corrections program’ means a community-based or community-oriented program that provides supervision of offenders pursuant to this article. Such program shall be operated by a unit of local government, the department, or any private individual, partnership, corporation, or association. Such program may provide residential or nonresidential services for offenders, monitoring of the activities of offenders, oversight of victim restitution and community service by offenders, programs and services to aid offenders in obtaining and holding regular employment, programs and services to aid offenders in enrolling in and maintaining academic courses, programs and services to aid offenders in participating in vocational training programs, programs and services to aid offenders in utilizing the resources of the community, meeting the personal and family needs of such offenders, programs and services to aid offenders in obtaining appropriate treatment for such offenders, programs and services to aid offenders in participating in whatever specialized programs exist within the community, day reporting programs, and such other services and programs as may be appropriate to aid in offender rehabilitation and public safety.”); § 18-1.3-1005(1), C.R.S. 2019 (“The department shall establish an intensive supervision parole program for sex offenders sentenced to incarceration and subsequently released on parole pursuant to this part 10.”); §§ 17-27.5-101 to -106, C.R.S. 2019 (intensive supervision programs); Instruction F:59 (defining “community corrections program”).

### 8-2:23

#### Attempt to Escape (Held or Charged)

**The elements of the crime of attempt to escape (held or charged) are:**

1. That the defendant,

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**2. in the State of Colorado, at or about the date and place charged,**

**3. was in custody or confinement,**

**4. while being held for or charged with, but not convicted of [insert name(s) of offense(s)], and**

**5. knowingly,**

**6. attempted to escape from custody or confinement.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of attempt to escape (held or charged).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of attempt to escape (held or charged).**

**COMMENT**

1. *See* § 18-8-208.1(2), (4), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction G2:01 (criminal attempt).

3. *See also* *People v. Benzor*, 100 P.3d 542, 543 (Colo. App. 2004) (“the placement of the mental state ‘knowingly’ after the element of ‘following a conviction of a felony’ and before the element of ‘escapes from custody or confinement’ evidences the General Assembly’s intent to limit the culpable mental state only to the conduct element of the offense”).

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### 8-2:24.SP

#### **Attempt to Escape—Special Instruction (Conditional Release; Staff Secure Facility)**

[A person who participates in a work release program, a home detention program, a furlough, an intensive supervision program, or any other similar authorized supervised or unsupervised absence from a detention facility, and who is required to report back to the detention facility at a specified time is deemed to be in custody.]

[A person held in a staff secure facility is deemed to be in custody or confinement.]

#### **COMMENT**

1. See § 18-8-208.1(6), (7), C.R.S. 2019.
2. See Instruction F:96 (defining “detention facility”); Instruction F:173 (defining “home detention”); Instruction F:352 (defining “staff secure facility”).
3. The terms “work release program,” “furlough” and “intensive supervision program” are not defined in Article 8, Part 2. See §§ 17-27.5-101 to -106, C.R.S. 2019 (intensive supervision programs); § 18-1.3-207, C.R.S. 2019 (work release programs).

### 8-2:25

#### **Active Participation in a Riot**

The elements of the crime of active participation in a riot are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was confined in any detention facility within the state, and
4. with two or more other persons,



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5. actively participated in violent conduct that created grave danger of, or did cause, damage to property or injury to other persons, and

6. substantially obstructed the performance of institutional functions, or commanded, induced, entreated, or otherwise attempted to persuade others to engage in such conduct.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of active participation in a riot.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of active participation in a riot.

COMMENT

1. See § 18-8-211(1), C.R.S. 2019.

2. See Instruction F:97 (defining “detention facility”); see also Instruction F:36 (defining “bodily injury”); see also *Webster’s Third New International Dictionary* 759 (2002) (defining “entreat” as meaning “beg” or “prevail upon by pleading”).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

4. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 3.

8-2:26.INT

**Active Participation in a Riot—Interrogatory (Deadly  
Weapon or Destructive Device)**

If you find the defendant not guilty of active participation in a riot, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of active participation in a riot, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant's participation involve the use or represented use of a deadly weapon or destructive device? (Answer "Yes" or "No")**

The defendant's participation involved the use or represented use of a deadly weapon or destructive device only if:

1. he [she] employed, in the course of such participation, a deadly weapon, destructive device, or any article used or fashioned in a manner to cause a person to reasonably believe that the article was a deadly weapon, or, in the course of such participation, he [she] represented verbally or otherwise that he [she] was armed with a deadly weapon.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark "Yes" in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide

the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

**COMMENT**

1. See § 18-8-211(2)(a), C.R.S. 2019.
2. See Instruction F:88 (defining “deadly weapon”); Instruction F:94 (defining “destructive device”); see, e.g., Instruction E:28 (special verdict form).

**8-2:27**

**Disobeying an Order Related to a Riot in a Detention Facility**

The elements of the crime of disobeying an order related to a riot in a detention facility are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was confined in any detention facility within the state, and
4. during a riot, or when a riot was impending,
5. intentionally,
6. disobeyed an order of a detention officer to move, disperse, or refrain from specified activities in the immediate vicinity of the riot or impending riot.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements be-



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yond a reasonable doubt, you should find the defendant guilty of disobeying an order related to a riot in a detention facility.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of disobeying an order related to a riot in a detention facility.

### COMMENT

1. See § 18-8-211(3), C.R.S. 2019.
2. See Instruction F:97 (defining “detention facility”); Instruction F:185 (defining “intentionally”).

### 8-2:28

#### Violation of Bail Bond Conditions

The elements of the crime of violation of bail bond conditions are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was released on a bail bond of any kind, and
4. before, during, or after the time that he [she] was released, he [she] was accused by complaint, information, indictment, or delinquency petition of [insert name(s) of offense(s)] arising from the conduct for which he [she] was arrested, and
5. knowingly,
6. failed to appear for trial or other proceedings in the case in which the bail bond was filed, or violated a condition of the bail bond.
- [7. and that the defendant’s conduct was not

legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of violation of bail bond conditions.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of violation of bail bond conditions.

COMMENT

1. See § 18-8-212(1), (2), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).
3. See *People v. Luna*, 2013 COA 67, ¶ 17, 410 P.3d 475, 478 (“in order to prove that a defendant violated section 18-8-212(1), the prosecution must prove beyond a reasonable doubt that the terms of the bond were in effect at the time of the alleged illegal conduct”).

8-2:29

**Unauthorized Residency by an Adult Offender From  
Another State (Non-Resident)**

The elements of the crime of unauthorized residency by an adult offender from another state (non-resident) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. in order to stay in Colorado, was required to have the permission of the compact administrator, or a designated deputy of the compact administrator, of the interstate compact for adult offender supervision, and

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4. was not a resident of Colorado, and
5. had not been accepted by the compact administrator of the interstate compact for adult offender supervision, and
6. was found residing in Colorado.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized residency by an adult offender from another state (non-resident).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized residency by an adult offender from another state (non-resident).

### COMMENT

1. See § 18-8-213(1)(a), C.R.S. 2019.

8-2:30

### Unauthorized Residency by an Adult Offender From Another State (Resident)

The elements of the crime of unauthorized residency by an adult offender from another state (resident) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. in order to stay in Colorado, was required to



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have the permission of the compact administrator, or a designated deputy of the compact administrator, of the interstate compact for adult offender supervision, and

4. was a resident of Colorado, and

5. had not been accepted by the compact administrator of the interstate compact for adult offender supervision, and

6. was found residing in Colorado more than ninety days after his [her] transfer from the receiving state.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized residency by an adult offender from another state (resident).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized residency by an adult offender from another state (resident).

### **COMMENT**

1. See § 18-8-213(1)(b), C.R.S. 2019.

## **CHAPTER 8-3**

## **BRIBERY AND CORRUPT INFLUENCES**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2015.

8-3:01

**Bribery (Offering or Conferring a Pecuniary Benefit)**

The elements of the crime of bribery (offering or conferring a pecuniary benefit) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. offered, conferred, or agreed to confer any pecuniary benefit upon a public servant,
4. with the intent,
5. to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his [her] official capacity.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bribery (offering or conferring a pecuniary benefit).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bribery (offering or conferring a pecuniary benefit).

**COMMENT**

1. See § 18-8-302(1)(a), C.R.S. 2019.

2. See Instruction F:265.7 (defining “pecuniary benefit” (bribery and corrupt influences)); Instruction F:306.5 (defining “public servant” (bribery and corrupt influences)).

8-3:02

**Bribery (Soliciting or Accepting a Pecuniary Benefit)**

The elements of the crime of bribery (soliciting or accepting a pecuniary benefit) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. while a public servant,
4. solicited, accepted, or agreed to accept any pecuniary benefit,
5. upon an agreement or understanding that his [her] vote, opinion, judgment, exercise of discretion, or other action as a public servant would thereby be influenced.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bribery (soliciting or accepting a pecuniary benefit).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bribery (soliciting or accepting a pecuniary benefit).

**COMMENT**

1. See § 18-8-302(1)(b), C.R.S. 2019.
2. See Instruction F:265.7 (defining “pecuniary benefit” (bribery and



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corrupt influences)); Instruction F:306.5 (defining “public servant” (bribery and corrupt influences)); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### **8-3:03.SP**

#### **Bribery—Special Instruction (Lack of Qualification Not a Defense)**

It is not a defense to a bribery charge that the person sought to be influenced was not qualified to act in the desired way, whether because he [she] had not yet assumed office, lacked jurisdiction, or for any other reason.

#### **COMMENT**

1. *See* § 18-8-302(2), C.R.S. 2019.

### **8-3:04**

#### **Compensation for Past Official Behavior (Soliciting or Accepting a Pecuniary Benefit)**

The elements of the crime of compensation for past official behavior (soliciting or accepting a pecuniary benefit) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. solicited, accepted, or agreed to accept any pecuniary benefit,
4. as compensation for giving, as a public servant, a decision, opinion, recommendation, or vote favorable to another or for otherwise exercising a discretion in his [her] favor,

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**5. whether or not he [she] in so doing violated his [her] duty.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of compensation for past official behavior (soliciting or accepting a pecuniary benefit).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of compensation for past official behavior (soliciting or accepting a pecuniary benefit).**

**COMMENT**

1. *See* § 18-8-303(1)(a), C.R.S. 2019.

2. *See* Instruction F:265.7 (defining “pecuniary benefit” (bribery and corrupt influences)); Instruction F:306.5 (defining “public servant” (bribery and corrupt influences)); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The Committee has included the fifth element because its language appears in the statute. *See* § 18-8-303(1)(a). The Committee notes, however, that this “whether or not” language is arguably superfluous, as the prosecution will never need to introduce evidence to prove this element. Rather, this language presumably clarifies that a defendant may not claim that he did not violate any of his duties as an affirmative defense.

**8-3:05**

**Compensation for Past Official Behavior (Offering or  
Conferring a Pecuniary Benefit)**

**The elements of the crime of compensation for**

## **BRIBERY AND CORRUPT INFLUENCES**

**past official behavior (offering or conferring a pecuniary benefit) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. offered, conferred, or agreed to confer any pecuniary benefit upon a public servant,**
- 4. as compensation to that public servant for giving a decision, opinion, recommendation, or vote favorable to another or for exercising a discretion in that other person's favor,**
- 5. whether or not that public servant in so doing violated his [her] duty.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of compensation for past official behavior (offering or conferring a pecuniary benefit).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of compensation for past official behavior (offering or conferring a pecuniary benefit).**

### **COMMENT**

**1. See § 18-8-303(1)(b), C.R.S. 2019.**

**2. See Instruction F:265.7 (defining “pecuniary benefit” (bribery and corrupt influences)); Instruction F:306.5 (defining “public servant” (bribery and corrupt influences)); see also § 18-1-503(2), C.R.S. 2019 (“Al-**



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though no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The Committee has included the fifth element because its language appears in the statute. *See* § 18-8-303(1)(a)–(b). The Committee notes, however, that this “whether or not” language is arguably superfluous, as the prosecution will never need to introduce evidence to prove this element. Rather, this language presumably clarifies that a defendant may not claim that the public servant did not violate any of his duties as an affirmative defense.

**8-3:06**

### **Soliciting Unlawful Compensation**

**The elements of the crime of soliciting unlawful compensation are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a public servant, and**
- 4. requested a pecuniary benefit for the performance of an official action,**
- 5. knowing that he [she] was required to perform without compensation or at a level of compensation lower than that requested.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of soliciting unlawful compensation.**

**After considering all the evidence, if you decide**

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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of soliciting unlawful compensation.**

### **COMMENT**

1. See § 18-8-304, C.R.S. 2019.

2. See Instruction F:265.7 (defining “pecuniary benefit” (bribery and corrupt influences)); Instruction F:306.5 (defining “public servant” (bribery and corrupt influences)).

### **8-3:07**

#### **Trading in Public Office (Offering or Conferring a Pecuniary Benefit)**

**The elements of the crime of trading in public office (offering or conferring a pecuniary benefit) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. offered, conferred, or agreed to confer any pecuniary benefit upon a public servant or party officer,**
- 4. upon an agreement or understanding that he [she] or a particular person would or might be appointed to a public office or designated or nominated as a candidate for public office.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of trading in public office (offering or conferring a pecuniary benefit).**

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of trading in public office (offering or conferring a pecuniary benefit).**

### COMMENT

1. See § 18-8-305(1)(a), C.R.S. 2019.
2. See Instruction F:258.5 (defining “party officer”); Instruction F:265.7 (defining “pecuniary benefit” (bribery and corrupt influences)); Instruction F:306.5 (defining “public servant” (bribery and corrupt influences)); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).
3. See Instruction H:52.3 (affirmative defense of “customary contribution”).

### 8-3:08

#### **Trading in Public Office (Soliciting or Accepting a Pecuniary Benefit)**

**The elements of the crime of trading in public office (soliciting or accepting a pecuniary benefit) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. while a public servant or party officer,
4. solicited, accepted, or agreed to accept any pecuniary benefit from another,
5. upon an agreement or understanding that a particular person would or might be appointed to a public office or designated or nominated as a candidate for public office.



[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of trading in public office (soliciting or accepting a pecuniary benefit).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of trading in public office (soliciting or accepting a pecuniary benefit).

COMMENT

1. See § 18-8-305(1)(b), C.R.S. 2019.

2. See Instruction F:258.5 (defining “party officer”); Instruction F:265.7 (defining “pecuniary benefit” (bribery and corrupt influences)); Instruction F:306.5 (defining “public servant” (bribery and corrupt influences)); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:52.3 (affirmative defense of “customary contribution”).

8-3:09

**Attempt to Influence a Public Servant**

The elements of the crime of attempt to influence a public servant are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. attempted to influence any public servant by

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means of deceit or by threat of violence or economic reprisal against any person or property,

4. with the intent,

5. to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him [her] or the agency or body of which he [she] is a member.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of attempt to influence a public servant.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of attempt to influence a public servant.

### COMMENT

1. See § 18-8-306, C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:306.5 (defining “public servant” (bribery and corrupt influences)).

3. See *People v. Riley*, 2015 COA 152, ¶ 29, 380 P.3d 157, 164 (holding that, because there is no criminal offense in Colorado of *actually* influencing a public servant, courts should not define “attempt” pursuant to section 18-2-101(1), C.R.S. 2019, for the crime of *attempting* to influence a public servant).

4. See *People v. Janousek*, 871 P.2d 1189, 1196 (Colo. 1994) (“[N]either ‘deceit’ nor ‘economic reprisal’ is defined in [section 18-8-306]. Both words, however, are terms of common usage, and people of ordinary intelligence need not guess at their meaning.”); *People v. Beck*, 187 P.3d 1125, 1128 (Colo. App. 2008) (“Actual influence is not required. Rather, [section 18-8-306] is aimed at attempts to influence public servants in their official capacities to improperly alter or affect the performance of

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their official duties.”); *People v. Stanley*, 170 P.3d 782, 786–87 (Colo. App. 2007) (Pursuant to First Amendment jurisprudence, section 18-8-306 “must be interpreted to limit criminal culpability to statements constituting ‘true threats.’”).

5. In 2017, the Committee replaced the prior Comment 3 with the existing comment citing to *People v. Riley*.

### **8-3:10**

#### **Designation of Supplier**

**The elements of the crime of designation of supplier are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a public servant, and**
- 4. required or directed a bidder or contractor to deal with a particular person,**
- 5. in procuring any goods or service required in submitting a bid to or fulfilling a contract with any government.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of designation of supplier.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of designation of supplier.**



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### COMMENT

1. *See* § 18-8-307(1), C.R.S. 2019.

2. *See* Instruction F:162 (defining “government”); Instruction F:165 (defining “governmental function”); Instruction F:306.5 (defining “public servant” (bribery and corrupt influences)); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. *See* Instruction H:52.5 (affirmative defense of “scope of authority”).

### 8-3:11

#### Failing to Disclose a Conflict of Interest

The elements of the crime of failing to disclose a conflict of interest are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a public servant, and
4. exercised any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction,
5. without having given seventy-two hours’ actual advance written notice to the secretary of state and to the governing body of the government which employed the public servant of the existence of a known potential conflicting interest of the public servant in the transaction with reference to which he [she] was about to act in his [her] official capacity.
- [6. and that the defendant’s conduct was not

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legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failing to disclose a conflict of interest.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failing to disclose a conflict of interest.

### COMMENT

1. See § 18-8-308(1), C.R.S. 2019.

2. See Instruction F:162 (defining “government”); Instruction F:281.5 (defining “potential conflicting interest”); Instruction F:306.5 (defining “public servant” (bribery and corrupt influences)); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

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### CHAPTER COMMENTS

1. Section 18-8-409, C.R.S. 2019, provides as follows: “A person who violates a rule or regulation promulgated by any judicial nominating commission shall not be subject to criminal prosecution.” However, the Committee has not drafted a model affirmative defense instruction.

2. The Committee added this chapter in 2016.

**8-4:01**

### Misuse of Official Information (Pecuniary Interest)

The elements of the crime of misuse of official information (pecuniary interest) are:

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- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a public servant, and**
- 4. in contemplation of official action by himself [herself] or by a governmental unit with which he [she] was associated or in reliance on information to which he [she] had access in his [her] official capacity and which had not been made public,**
- 5. acquired a pecuniary interest in any property, transaction, or enterprise which might be affected by such information or official action.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of misuse of official information (pecuniary interest).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of misuse of official information (pecuniary interest).**

**COMMENT**

**1. See § 18-8-402(1)(a), C.R.S. 2019.**

**2. See Instruction F:162 (defining “government” (general definition)); Instruction F:306.5 (defining “public servant” (abuse of public office)); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof,**



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if the proscribed conduct necessarily involves such a culpable mental state.”).

**8-4:02**

### **Misuse of Official Information (Speculate or Wager)**

**The elements of the crime of misuse of official information (speculate or wager) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a public servant, and**
- 4. in contemplation of official action by himself [herself] or by a governmental unit with which he [she] was associated or in reliance on information to which he [she] had access in his [her] official capacity and which had not been made public,**
- 5. speculated or wagered on the basis of such information or official action.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of misuse of official information (speculate or wager).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of misuse of official information (speculate or wager).**

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### COMMENT

1. *See* § 18-8-402(1)(b), C.R.S. 2019.

2. *See* Instruction F:162 (defining “government” (general definition)); Instruction F:306.5 (defining “public servant” (abuse of public office)); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 8-4:03

#### **Misuse of Official Information (Aid, Advise, or Encourage)**

**The elements of the crime of misuse of official information (aid, advise, or encourage) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a public servant, and**
- 4. in contemplation of official action by himself [herself] or by a governmental unit with which he [she] was associated or in reliance on information to which he [she] had access in his [her] official capacity and which had not been made public,**
- 5. with intent,**
- 6. to confer on any person a special pecuniary benefit,**
- 7. [aided, advised, or encouraged another to acquire a pecuniary interest in any property, transaction, or enterprise which might be affected by such information or official action] [aided, advised, or encouraged another to specu-**

late or wager on the basis of such information or official action].

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of misuse of official information (aid, advise, or encourage).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of misuse of official information (aid, advise, or encourage).

#### COMMENT

1. See § 18-8-402(1)(c), C.R.S. 2019.
2. See Instruction F:162 (defining "government" (general definition)); Instruction F:185 (defining "with intent"); Instruction F:265.7 (defining "pecuniary benefit" (abuse of public office)); Instruction F:306.5 (defining "public servant" (abuse of public office)).

8-4:04

### Official Oppression (Subjecting Another to Mistreatment)

The elements of the crime of official oppression (subjecting another to mistreatment) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a public servant, and
4. while acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity,



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5. with actual knowledge,
6. that his [her] conduct was illegal,
7. subjected another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, or lien.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of official oppression (subjecting another to mistreatment).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of official oppression (subjecting another to mistreatment).

COMMENT

1. See § 18-8-403(1)(a), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:306.5 (defining “public servant” (abuse of public office)).

8-4:05

**Official Oppression (Deny Counsel)**

The elements of the crime of official oppression (deny counsel) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a public servant who had legal authority

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and jurisdiction of any person legally restrained of his [her] liberty, and

4. while acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity,

5. with actual knowledge,

6. that his [her] conduct was illegal,

7. denied the person restrained the reasonable opportunity to consult in private with a licensed attorney-at-law, after the person had expressed a desire to consult with such attorney,

8. when there was no danger of imminent escape.

[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of official oppression (deny counsel).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of official oppression (deny counsel).

## COMMENT

1. See § 18-8-403(1)(b), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:306.5 (defining “public servant” (abuse of public office)).

8-4:06

**First Degree Official Misconduct (Commit Act)**

The elements of the crime of first degree official misconduct (commit act) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a public servant, and
4. with intent,
5. to obtain a benefit for himself [herself] or another or maliciously to cause harm to another, he [she],
6. knowingly,
7. committed an act relating to his [her] office but constituting an unauthorized exercise of his [her] official function.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of first degree official misconduct (commit act).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of first degree official misconduct (commit act).



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### **COMMENT**

1. See § 18-8-404(1)(a), C.R.S. 2019.

2. See Instruction F:30.5 (defining “benefit”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:306.5 (defining “public servant” (abuse of public office)).

### **8-4:07**

#### **First Degree Official Misconduct (Refrain From Duty)**

The elements of the crime of first degree official misconduct (refrain from duty) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a public servant, and
4. with intent,
5. to obtain a benefit for himself [herself] or another or maliciously to cause harm to another, he [she],
6. knowingly,
7. refrained from performing a duty imposed upon him [her] by law.
- [8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of first degree official misconduct (refrain from duty).

After considering all the evidence, if you decide

**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of first degree official misconduct (refrain from duty).**

**COMMENT**

1. *See* § 18-8-404(1)(b), C.R.S. 2019.

2. *See* Instruction F:30.5 (defining “benefit” (abuse of public office)); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:306.5 (defining “public servant” (abuse of public office)).

3. The court should draft a special instruction explaining the relevant legal duty. Further, where the existence of the legal duty turns on a factual issue, the factual question must be submitted to the jury for determination.

**8-4:08**

**First Degree Official Misconduct (Violate Statute)**

**The elements of the crime of first degree official misconduct (violate statute) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a public servant, and**
- 4. with intent,**
- 5. to obtain a benefit for himself [herself] or another or maliciously to cause harm to another, he [she],**
- 6. knowingly,**
- 7. violated [insert a description of the relevant statute, rule, or regulation] relating to his [her] office.**
- [8. and that the defendant’s conduct was not**

legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of first degree official misconduct (violate statute).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of first degree official misconduct (violate statute).

COMMENT

1. See § 18-8-404(1)(c), C.R.S. 2019.

2. See Instruction F:30.5 (defining “benefit” (abuse of public office)); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:306.5 (defining “public servant” (abuse of public office)).

8-4:09

**Second Degree Official Misconduct (Refrain From Duty)**

The elements of the crime of second degree official misconduct (refrain from duty) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a public servant, and
4. knowingly, and
5. arbitrarily and capriciously,
6. refrained from performing a duty imposed upon him [her] by law.



[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of second degree official misconduct (refrain from duty).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of second degree official misconduct (refrain from duty).

#### COMMENT

1. See § 18-8-405(1)(a), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:306.5 (defining “public servant” (abuse of public office)).

3. The court should draft a special instruction explaining the relevant legal duty. Further, where the existence of the legal duty turns on a factual issue, the factual question must be submitted to the jury for determination.

4. + Section 42-4-1304(8), C.R.S. 2019, which discusses the Department of Public Health and Environment's rules regarding blood samples obtained from vehicle operators, provides that “[f]ailure to perform the required duties as prescribed by this section and by the administrative regulations and procedures resulting therefrom shall be deemed punishable under section 18-8-405.” However, the Committee has not drafted model instructions.

5. + In 2019, the Committee added Comment 4.

#### 8-4:10

### Second Degree Official Misconduct (Violate Statute)

The elements of the crime of second degree official misconduct (violate statute) are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. was a public servant, and

4. knowingly, and

5. arbitrarily and capriciously,

6. violated [insert description of statute, or lawfully adopted rule or regulation] relating to his [her] office.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of second degree official misconduct (violate statute).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of second degree official misconduct (violate statute).

#### COMMENT

1. See § 18-8-405(1)(b), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:306.5 (defining “public servant” (abuse of public office)).

**8-4:11**

#### Issuing a False Certificate

The elements of the crime of issuing a false certificate are:

1. That the defendant,

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2. in the State of Colorado, at or about the date and place charged,

3. was a public servant authorized by law to make and issue official certificates or other official written instruments, and

4. made and issued such an instrument containing a statement which he [she] knew to be false.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of issuing a false certificate.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of issuing a false certificate.

### COMMENT

1. See § 18-8-406, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:306.5 (defining “public servant” (abuse of public office)).

3. See *People v. Buckallew*, 848 P.2d 904, 908 (Colo. 1993) (“It is clear that a sheriff cannot fully perform his functions without the implied power to make official certificates. As such, he is ‘authorized by law to make and issue official certificates,’ and falls within the ambit of the statute.”).

### 8-4:12

## Embezzlement of Public Property

The elements of the crime of embezzlement of public property are:

1. That the defendant,



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2. in the State of Colorado, at or about the date and place charged,
3. was a public servant, and
4. lawfully or unlawfully,
5. came into possession of any public moneys or public property of whatever description, being the property of the state or of any political subdivision of the state, and
6. knowingly,
7. converted any of such public moneys or property to his [her] own use or to any use other than the public use authorized by law.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of embezzlement of public property.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of embezzlement of public property.

## COMMENT

1. See § 18-8-407(1), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:306.5 (defining “public servant” (abuse of public office)).
3. See *People v. Gallegos*, 260 P.3d 15, 23 (Colo. App. 2010) (holding that evidence of the sheriff-defendant’s use of county vehicles and personnel to transport inmates to his home, where they performed work on the sheriff’s home, satisfied the “public moneys or public property” element of the embezzlement charge in the indictment).

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4. The court may need to draft a special instruction to identify the “public use authorized by law.” *See* *People v. Morise*, 859 P.2d 247, 249 (Colo. App. 1993) (“[E]ven if defendant’s implied explanation for his use of the credit card, that he obtained cash advances to attempt to buy musical equipment, was accepted, such use would nevertheless be one not authorized by the district’s policy and would, therefore, be a use ‘other than the public use authorized by law’ within the meaning of § 18-8-407.”).

5. The Committee has included the fourth element because its language appears in the statute. *See* § 18-8-407(1). The Committee notes, however, that this “lawfully or unlawfully” language is arguably superfluous, as the prosecution will never need to introduce evidence to prove this element. Rather, this language presumably clarifies that a defendant may not claim that he came into possession of money or property lawfully as an affirmative defense.

### 8-4:13

#### Designation of Insurer

**The elements of the crime of designation of insurer are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a public servant, and**
- 4. directly or indirectly,**
- 5. required or directed a bidder on any public building or construction contract which was about to be or had been competitively bid to obtain from a particular insurer, agent, or broker any surety bond or contract of insurance required in such bid or contract or required by any law, ordinance, or regulation.**

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of designation of insurer.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of designation of insurer.

#### COMMENT

1. *See* § 18-8-408(1), C.R.S. 2019.

2. *See* Instruction F:306.5 (defining “public servant” (abuse of public office)); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Section 18-8-408(4), C.R.S. 2019, provides: “Nothing in this section shall be construed to prevent any such public servant acting on behalf of the government from exercising the right to approve or reject a surety bond or contract of insurance as to its form or sufficiency or the lack of financial capability of an insurer selected by a bidder.” It is unclear whether this provision establishes an affirmative defense.

4. The crime of designation of insurer only applies to contracts entered into on or after July 1, 1977. § 18-8-408(5), C.R.S. 2019.

5. The Committee has included the fourth element because its language appears in the statute. *See* § 18-8-408(1). The Committee notes, however, that this “directly or indirectly” language is arguably superfluous, as the prosecution will never need to introduce evidence to prove this element. Rather, this language presumably clarifies that a defendant may not claim that he acted indirectly as an affirmative defense.



CHAPTER 8-5

PERJURY AND RELATED OFFENSES

8-5:01

Perjury in the First Degree

The elements of the crime of perjury in the first degree are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. in any official proceeding,
  5. made a materially false statement,
  6. which he [she] did not believe to be true,
  7. under an oath required or authorized by law.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of perjury in the first degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of perjury in the first degree.

## PERJURY AND RELATED OFFENSES

### COMMENT

1. *See* § 18-8-502(1), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:220 (defining “materially false statement”); Instruction F:245 (defining “oath” and “required or authorized by law”); Instruction F:250 (defining “official proceeding”).

3. *See* Instruction H:53 (affirmative defense of retraction).

4. *See* *People v. Ellsworth*, 15 P.3d 1111, 1116 (Colo. App. 2000) (defendant charged with perjury in the first degree was not entitled to a jury instruction explaining the “two-witness” rule established by section 18-8-506, C.R.S. 2019; the applicability of the rule is a question of law to be decided by the trial court upon a motion for acquittal or for a directed verdict, or by an appellate court upon review for sufficiency of the evidence).

### 8-5:02.SP

#### **Perjury in the First Degree—Special Instruction (Knowledge of Materiality Not an Element; Mistaken Belief Not a Defense)**

**Knowledge of the materiality of the statement is not an element of perjury in the first degree, and a mistaken belief that the statement was not material is not a defense.**

### COMMENT

1. *See* § 18-8-502(2), C.R.S. 2019.

### 8-5:03

#### **Perjury in the Second Degree**

**The elements of the crime of perjury in the second degree are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. other than in an official proceeding,

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4. with an intent,
  5. to mislead a public servant in the performance of his [her] duty,
  6. made a materially false statement,
  7. which he [she] did not believe to be true,
  8. under an oath required or authorized by law.
- [9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of perjury in the second degree.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of perjury in the second degree.

**COMMENT**

1. See § 18-8-503(1), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:220 (defining “materially false statement”); Instruction F:245 (defining “oath” and “required or authorized by law”); Instruction F:250 (defining “official proceeding”); Instruction F:306 (defining “public servant”).

**8-5:04**

**False Swearing**

**The elements of the crime of false swearing are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,



## PERJURY AND RELATED OFFENSES

3. knowingly,
  4. made a materially false statement,
  5. which he [she] did not believe to be true,
  6. under an oath required or authorized by law.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false swearing.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false swearing.

### COMMENT

1. See § 18-8-504(1), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:220 (defining “materially false statement”); Instruction F:245 (defining “oath” and “required or authorized by law”).

### 8-5:05.SP

#### Perjury and False Swearing—Special Instruction (Inconsistent Statements)

Where a person charged with perjury or false swearing has made inconsistent material statements under oath, it is not necessary for the prosecution to prove which statement was false provided that it proves that one or the other statement was false, and not believed by the defendant to be true.

### COMMENT

1. See § 18-8-505(1), C.R.S. 2019 (specifying that both statements must have “been made within the period of statute of limitations”).

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2. The question of whether a statement was made within the statute of limitations will, in most cases, be an issue of law for the court to resolve. However, it may be necessary to draft an interrogatory if the applicability of the statute of limitations depends on the resolution of a factual dispute concerning the date on which a statement was allegedly made.

### **8-5:06.SP**

#### **Perjury and False Swearing—Special Instruction (Irregularities No Defense)**

**It is no defense to the charge of [perjury in the first degree] [perjury in the second degree] [false swearing] that:**

**[the defendant was not competent, for reasons other than mental disability or immaturity, to make the false statement alleged.]**

**[the statement was inadmissible under the law of evidence.]**

**[the oath was administered or taken in an irregular manner.]**

**[the person administering the oath lacked authority to do so, if the taking of the oath was required by law.]**

#### **COMMENT**

1. See § 18-8-509(1), C.R.S. 2019.

2. If necessary, the court should draft a supplemental instruction explaining its resolution of any threshold legal issue(s) related to the above factors.

CHAPTER 8-6

OFFENSES RELATING TO JUDICIAL AND  
OTHER PROCEEDINGS

8-6:01

Bribe-Receiving by a Witness (False or Withheld  
Testimony)

The elements of the crime of witness bribery  
(false or withheld testimony) are:

1. That the defendant,
2. in the State of Colorado, at or about the date  
and place charged,
3. was a witness or believed that he [she] was to  
be called as a witness in any official proceeding,  
and
4. intentionally,
5. solicited, accepted, agreed to accept,
6. any benefit,
7. upon an agreement or understanding that he  
[she] would testify falsely or unlawfully withhold  
testimony.

[8. and that the defendant's conduct was not  
legally authorized by the affirmative defense[s] in  
Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide  
the prosecution has proven each of the elements be-  
yond a reasonable doubt, you should find the defen-  
dant guilty of witness bribery (false or withheld  
testimony).



**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of witness bribery (false or withheld testimony).**

**COMMENT**

1. See § 18-8-603(1)(a), C.R.S. 2019.
2. See Instruction F:31 (defining “benefit”); Instruction F:185 (defining “intentionally”); Instruction F:250 (defining “official proceeding”); Instruction F:365 (defining “testimony”).
3. Although the caption of the statutory section labels the offense “bribe-receiving by a witness,” this is a misnomer because receipt of a bribe is not an element of the offense when the charge is based on the solicitation of a bribe, or an agreement to accept a bribe. Accordingly, the instruction refers to the offense as “witness bribery.”

**8-6:02**

**Bribe-Receiving by a Witness (Attempt to Avoid Legal Process)**

**The elements of the crime of witness bribery (attempt to avoid legal process) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a witness or believed that he [she] was to be called as a witness in any official proceeding, and
4. intentionally,
5. solicited, accepted, agreed to accept,
6. any benefit,
7. upon an agreement or understanding that he [she] would attempt to avoid legal process summoning him [her] to testify.

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**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of witness bribery (attempt to avoid legal process).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of witness bribery (attempt to avoid legal process).**

### COMMENT

1. See § 18-8-603(1)(b), C.R.S. 2019.

2. See Instruction F:31 (defining “benefit”); Instruction F:185 (defining “intentionally”); Instruction F:250 (defining “official proceeding”); Instruction F:365 (defining “testimony”).

3. Although the caption of the statutory section labels the offense “bribe-receiving by a witness,” this is a misnomer because receipt of a bribe is not an element of the offense when the charge is based on the solicitation of a bribe, or an agreement to accept a bribe. Accordingly, the instruction refers to the offense as “witness bribery.”

4. The term “legal process” is not defined by statute. See *Black's Law Dictionary* 1399 (10th ed. 2014) (defining “process” as “A summons or writ, esp. to appear or respond in court.”).

5. In the absence of case law on point, the Committee takes no position on whether the word “attempt” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

6. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 5.

8-6:03

**Bribe-Receiving by a Witness (Absenting)**

The elements of the crime of witness bribery (absenting) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was a witness or believed that he [she] was to be called as a witness in any official proceeding, and
  4. intentionally,
  5. solicited, accepted, agreed to accept,
  6. any benefit,
  7. upon an agreement or understanding that he [she] would attempt to absent himself [herself] from an official proceeding to which he [she] had been legally summoned.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of witness bribery (absenting).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of witness bribery (absenting).



## OFFENSES RELATING TO JUDICIAL AND OTHER PROCEEDINGS

### COMMENT

1. See § 18-8-603(1)(c), C.R.S. 2019.
2. See Instruction F:31 (defining “benefit”); Instruction F:185 (defining “intentionally”); Instruction F:250 (defining “official proceeding”).
3. Although the caption of the statutory section labels the offense “bribe-receiving by a witness,” this is a misnomer because receipt of a bribe is not an element of the offense when the charge is based on the solicitation of a bribe, or an agreement to accept a bribe. Accordingly, the instruction refers to the offense as “witness bribery.”
4. In the absence of case law on point, the Committee takes no position on whether the word “attempt” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).
5. In 2015, the Committee added Comment 4.

**8-6:04**

### **Bribing a Juror**

**The elements of the crime of bribing a juror are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to influence a juror’s vote, opinion, decision, or other action as a juror,
5. offered, conferred, or agreed to confer,
6. any benefit,
7. upon a juror.

**[8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bribing a juror.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bribing a juror.

COMMENT

1. See § 18-8-606(1), C.R.S. 2019.
2. See Instruction F:31 (defining “benefit”); Instruction F:185 (defining “with intent”); Instruction F:192 (defining “juror”).

8-6:05

**Bribe-Receiving by a Juror**

The elements of the crime of juror bribery are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. solicited, accepted, or agreed to accept,
5. any benefit,
6. upon an agreement or understanding that his [her] vote, opinion, decision, or other action as a juror would thereby be influenced.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide

## OFFENSES RELATING TO JUDICIAL AND OTHER PROCEEDINGS

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of juror bribery.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of juror bribery.

### COMMENT

1. See § 18-8-607(1), C.R.S. 2019.
2. See Instruction F:30 (defining “benefit”); Instruction F:185 (defining “intentionally”); Instruction F:192 (defining “juror”).
3. Although the caption of the statutory section labels the offense “bribe-receiving by a juror,” this is a misnomer because receipt of a bribe is not an element of the offense when the charge is based on the solicitation of a bribe, or an agreement to accept a bribe. Accordingly, the instruction refers to the offense as “juror bribery.”

### 8-6:06

#### Intimidating a Juror

The elements of the crime of intimidating a juror are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. attempted,
5. by use of a threat of harm or injury to any person or property,
6. to influence a juror’s vote, opinion, decision, or other action as a juror.
- [7. and that the defendant’s conduct was not



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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of intimidating a juror.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of intimidating a juror.**

### COMMENT

1. *See* § 18-8-608(1), C.R.S. 2019.

2. *See* Instruction F:185 (defining “intentionally”); Instruction F:192 (defining “juror”).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

4. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 3.

**8-6:07**

### **Jury-Tampering (Influence)**

**The elements of the crime of jury-tampering (influence) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to influence a juror’s vote, opinion, decision, or other action in a case,**

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5. attempted, directly or indirectly, to communicate with a juror,

6. other than as a part of the proceedings in the trial of the case.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of jury-tampering (influence).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of jury-tampering (influence).

### COMMENT

1. See § 18-8-609(1), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:192 (defining “juror”).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

4. + See *People v. Iannicelli*, 2019 CO 80, ¶¶ 36, 50, 449 P.3d 387, 394, 396 (holding that the definition of “juror” in section 18-8-601(1), C.R.S. 2019, applies to the crime of jury tampering; further holding that the crime “extends only to attempts to communicate with jurors about a specifically identifiable case”).

5. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 3.

6. + In 2019, the Committee added Comment 4.

8-6:08

**Jury-Tampering (Selection)**

The elements of the crime of jury-tampering (selection) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. participated in the fraudulent processing or selection of jurors or prospective jurors.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of jury-tampering (selection).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of jury-tampering (selection).

**COMMENT**

1. See § 18-8-609(1.5) C.R.S. 2019.
2. See Instruction F:192 (defining "juror"); Instruction F:195 (defining "knowingly").

8-6:09.INT

**Jury-Tampering (Class One Felony)—Interrogatory**

If you find the defendant not guilty of jury-



tampering, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of jury-tampering, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Was the jury-tampering in a class one felony trial?  
(Answer “Yes” or “No”)**

**The jury-tampering was in a class one felony trial only if:**

1. **The defendant committed the jury-tampering in a trial for [insert name(s) of class one felony offense(s)].**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

#### COMMENT

1. *See* § 18-8-609(2), C.R.S. 2019.
2. *See, e.g.*, Instruction E:28 (special verdict form).

8-6:10

**Tampering With Physical Evidence (Impair)**

The elements of the crime of tampering with physical evidence (impair) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. believed that an official proceeding was pending or was about to be instituted, and
  4. acting without legal right or authority,
  5. destroyed, mutilated, concealed, removed, or altered physical evidence,
  6. with intent to impair its verity or availability in the pending or prospective official proceeding.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with physical evidence (impair).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with physical evidence (impair).

**COMMENT**

1. See § 18-8-610(1)(a), C.R.S. 2019.
2. See Instruction F:185 (defining “with intent”); Instruction F:250

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(defining “official proceeding”); Instruction F:277 (defining “physical evidence”).

**8-6:11**

### **Tampering With Physical Evidence (Introduce)**

**The elements of the crime of tampering with physical evidence (introduce) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. believed that an official proceeding was pending or was about to be instituted, and**
- 4. acting without legal right or authority,**
- 5. knowingly,**
- 6. made, presented or offered any false or altered physical evidence,**
- 7. with intent that it be introduced in the pending or prospective official proceeding.**
- [8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with physical evidence (introduce).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with physical evidence (introduce).**



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### COMMENT

1. See § 18-8-610(1)(b), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:250 (defining “official proceeding”); Instruction F:277 (defining “physical evidence”).

### 8-6:11.5

#### **Tampering With a Deceased Human Body**

The elements of the crime of tampering with a deceased human body are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. believed that an official proceeding was pending, in progress, or about to be instituted, and
4. acting without legal right or authority,
5. willfully,
6. destroyed, mutilated, concealed, removed, or altered a human body, part of a human body, or human remains,
7. with intent,
8. to impair its or their appearance or availability in the official proceedings.
- [9. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-

**dant guilty of tampering with a deceased human body.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with a deceased human body.**

**COMMENT**

1. See § 18-8-610.5(1), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:195 (defining “willfully”); Instruction F:250 (defining “official proceeding”).

3. The Committee added this instruction in 2016 pursuant to new legislation. See Ch. 72, sec. 1, § 18-8-610.5(1), 2016 Colo. Sess. Laws 191, 191.

**8-6:12**

**Simulating Legal Process**

**The elements of the crime of simulating legal process are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. delivered or caused to be delivered to another,**
- 5. a request for the payment of money on behalf of any creditor including himself [herself] which in form and substance simulated any legal process issued by any court of this state.**

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

## COLORADO JURY INSTRUCTIONS—CRIMINAL

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of simulating legal process.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of simulating legal process.

### COMMENT

1. See § 18-8-611(1), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).
3. The term “legal process” is not defined by statute. See *Black’s Law Dictionary* 1399 (10th ed. 2014) (defining “process” as “A summons or writ, esp. to appear or respond in court.”).

### 8-6:13

#### Failure to Obey a Jury Summons

The elements of the crime of failure to obey a juror summons are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. received a summons to serve as a [trial] [grand] juror, and
5. failed to obey the summons,
6. without justifiable excuse.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to obey a juror summons.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to obey a juror summons.

### COMMENT

1. *See* § 18-8-612(1), C.R.S. 2019.

2. *See* Instruction F:192 (defining “juror”); Instruction F:195 (defining “knowingly”).

### 8-6:14

#### Willful Misrepresentation of Material Fact On a Juror Questionnaire

The elements of the crime of willful misrepresentation of material fact on a juror questionnaire are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. willfully,
4. made a misrepresentation of a material fact,
5. when he [she] provided information on a juror questionnaire.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements be-

yond a reasonable doubt, you should find the defendant guilty of willful misrepresentation of material fact on a juror questionnaire.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of willful misrepresentation of material fact on a juror questionnaire.

COMMENT

1. See § 18-8-613(1), C.R.S. 2019.

2. See Instruction F:192 (defining “juror”); Instruction F:195 (defining “willfully”).

8-6:15

**Willful Harassment of a Juror by an Employer**

The elements of the crime of willful harassment of a juror by an employer are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. willfully,
4. deprived an employed juror of employment or any incidents or benefits of employment, or harassed, threatened, or coerced an employee because the employee received a juror summons, responded to a juror summons, performed any obligation or election of juror service as a trial juror or grand juror, or exercised his [her] her right to [insert description of right exercised under the “Colorado Uniform Jury Selection and Service Act”, Article 71 of Title 13].

[5. and that the defendant’s conduct was not

legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of willful harassment of a juror by an employer.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of willful harassment of a juror by an employer.

COMMENT

1. See § 18-8-614(1), C.R.S. 2019.

2. See Instruction F:30 (defining “benefit”); Instruction F:192 (defining “juror”); Instruction F:195 (defining “willfully”).

8-6:16

**Retaliation Against a Judge**

The elements of the crime of retaliation against a judge are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. made a credible threat directly to a judge, or to another person if the defendant intended that the communication would be relayed to the judge, or to a person whom the defendant knew was required by statute or ethical rule to report the communication to the judge; or committed an act constituting the crime of harassment, or an act of harm or injury upon a person or property, which action was directed against or committed upon



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the judge, a member of the judge's family, a person in close relationship to the judge, or a person residing in the same household with the judge,

4. as retaliation or retribution against a judge who was serving in a legal matter assigned to the judge that involved the defendant or a person on whose behalf the defendant was acting.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of retaliation against a judge.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of retaliation against a judge.

### COMMENT

1. See § 18-8-615(1), C.R.S. 2019.

2. See Instruction F:77 (defining "credible threat"); Instruction F:191 (defining "judge"); Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment).

3. It may be necessary to draft a supplemental instruction explaining the relevant principles of law related to a person's duty to report. See *People v. Berry*, 292 P.3d 954, 958 (Colo. App. 2011) ("to violate [section 18-8-615(1)(b)(II)(B)] by making a threat to a person who has the duty to report that threat to the judge, an individual making a threat must know that that person is under such a duty").

3. The reference to the "crime of harassment" is necessary to satisfy the constitutional requirement recognized in *People v. Hickman*, 988 P.2d 628, 643 (Colo. 1999) (holding that the phrase "act of harassment," as it appeared in section 18-8-706 before that statute was amended to include an explicit reference to the offense of harassment, was unconstitutionally overbroad).

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4. If the defendant is not charged with harassment, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. *See* Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment). Place the elemental instruction for harassment immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for harassment.

### **8-6:17**

#### **Retaliation Against a Prosecutor (Credible Threat)**

**The elements of the crime of retaliation against a prosecutor (credible threat) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. as retaliation or retribution against a prosecutor,**
- 5. made a credible threat,**
- 6. [directly to the prosecutor] [to a person other than the prosecutor whom the defendant intended to relay the communication to the prosecutor] [to a person who was required by statute or ethical rule to report the communication to the prosecutor or to the court], and**
- 7. the threat was directed against [an elected district attorney] [a prosecutor who had served or was serving in a legal matter assigned to the prosecutor involving the defendant or a person on whose behalf the defendant was acting] [a member of the prosecutor's family, a person in close relationship to the prosecutor, or a person residing in the same household with the prosecutor].**



**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of retaliation against a prosecutor (credible threat).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of retaliation against a prosecutor (credible threat).**

#### COMMENT

1. See § 18-8-616(1)(a) to (b), C.R.S. 2019.

2. See Instruction F:77 (defining “credible threat”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:291.5 (defining “prosecutor”).

3. It may be necessary to draft a supplemental instruction explaining the relevant principles of law related to a person's duty to report. See *People v. Berry*, 292 P.3d 954, 958 (Colo. App. 2011) (interpreting the statute prohibiting retaliation against a judge, section 18-8-615, C.R.S. 2011, and holding that, “to violate the statute by making a threat to a person who has the duty to report that threat to the judge, an individual making a threat must know that that person is under such a duty”).

4. The Committee added this instruction in 2015. See Ch. 239, sec. 1, § 18-8-616(1)(a)–(b), 2015 Colo. Sess. Laws 884, 884 to 85.

#### 8-6:18

### **Retaliation Against a Prosecutor (Act of Harm or Injury)**

**The elements of the crime of retaliation against a prosecutor (act of harm or injury) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**



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**3. committed an act of harm or injury upon a person or property,**

**4. as retaliation or retribution against a prosecutor, and**

**5. the act of harm or injury was directed against or committed upon [an elected district attorney] [a prosecutor who had served or was serving in a legal matter assigned to the prosecutor involving the defendant or a person on whose behalf the defendant was acting] [a member of the prosecutor's family, a person in close relationship to the prosecutor, or a person residing in the same household with the prosecutor].**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of retaliation against a prosecutor (act of harm or injury).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of retaliation against a prosecutor (act of harm or injury).**

### COMMENT

1. See § 18-8-616(1)(a), C.R.S. 2019.

2. See Instruction F:291.5 (defining “prosecutor”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The Committee added this instruction in 2015. See Ch. 239, sec. 1, § 18-8-616(1)(a), 2015 Colo. Sess. Laws 884, 884.

CHAPTER 8-7

VICTIMS AND WITNESSES PROTECTION

8-7:01

Bribing a Witness or Victim (Testimony)

The elements of the crime of bribing a witness or victim (testimony) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. offered, conferred, or agreed to confer,
4. any benefit upon a witness, or a victim, or a person the defendant believed was to be called to testify as a witness or victim in any official proceeding, or upon a member of the witness's family, a member of the victim's family, a person in close relationship to the witness or victim, or a person residing in the same household as the witness or victim,
5. with intent,
6. to influence the witness or victim to testify falsely or unlawfully withhold any testimony.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bribing a witness or victim (testimony).

After considering all the evidence, if you decide

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the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bribing a witness or victim (testimony).

### COMMENT

1. See § 18-8-703(1)(a), C.R.S. 2019.

2. See Instruction F:31 (defining “benefit”); Instruction F:185 (defining “with intent”); Instruction F:250 (defining “official proceeding”); Instruction F:388 (defining “victim”); Instruction F:393 (defining “witness”).

### 8-7:02

#### Bribing a Witness or Victim (Process)

The elements of the crime of bribing a witness or victim (process) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. offered, conferred, or agreed to confer,
4. any benefit upon a witness, or a victim, or a person the defendant believed was to be called to testify as a witness or victim in any official proceeding, or upon a member of the witness’s family, a member of the victim’s family, a person in close relationship to the witness or victim, or a person residing in the same household as the witness or victim,
5. with intent,
6. to induce the witness or victim to avoid legal process summoning him [her] to testify.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bribing a witness or victim (process).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bribing a witness or victim (process).

### COMMENT

1. See § 18-8-703(1)(b), C.R.S. 2019.

2. See Instruction F:31 (defining “benefit”); Instruction F:185 (defining “with intent”); Instruction F:250 (defining “official proceeding”); Instruction F:388 (defining “victim”); Instruction F:393 (defining “witness”).

3. The term “legal process” is not defined by statute. See *Black’s Law Dictionary* 1399 (10th ed. 2014) (defining “process” as “[a] summons or writ, esp. to appear or respond in court.”).

### 8-7:03

#### Bribing a Witness or Victim (Absenting)

The elements of the crime of bribing a witness or victim (absenting) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. offered, conferred, or agreed to confer,
4. any benefit upon a witness, or a victim, or a person the defendant believed was to be called to testify as a witness or victim in any official proceeding, or upon a member of the witness’s family, a member of the victim’s family, a person in close relationship to the witness or victim, or a

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person residing in the same household as the witness or victim,

5. with intent,

6. to induce the witness or victim to absent himself [herself] from an official proceeding.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bribing a witness or victim (absenting).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bribing a witness or victim (absenting).

### COMMENT

1. See § 18-8-703(1)(c), C.R.S. 2019.

2. See Instruction F:31 (defining "benefit"); Instruction F:185 (defining "with intent"); Instruction F:250 (defining "official proceeding"); Instruction F:388 (defining "victim"); Instruction F:393 (defining "witness").

8-7:04

### Intimidating a Witness or Victim

The elements of the crime of intimidating a witness or victim are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. by use of a threat, or by committing the crime

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of harassment, or by committing an act of harm or injury to any person or property,

4. directed to or committed upon a witness in any criminal or civil proceeding, a victim of any crime, a person the defendant believed had been or was to be called or who would have been called to testify as a witness in any criminal or civil proceeding or a victim of any crime, a member of the witness's family, a member of the victim's family, a person in close relationship to the witness or victim, a person residing in the same household with the witness or victim, or any person who had reported a crime or who might have been called to testify as a witness to or victim of any crime,

5. intentionally,

6. attempted to, or did: influence the witness or victim to testify falsely or unlawfully withhold any testimony; induce the witness or victim to avoid legal process summoning him [her] to testify; induce the witness or victim to absent himself [herself] from an official proceeding; or inflict such harm or injury prior to such testimony or expected testimony.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of intimidating a witness or victim.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of intimidating a witness or victim.



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### COMMENT

1. See § 18-8-704(1), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:388 (defining “victim”); Instruction F:393 (defining “witness”); Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment).

3. In *People v. Rester*, 36 P.3d 98, 101 (Colo. App. 2001), a division of the court of appeals held that the trial court acted within its discretion, and in accordance with the supreme court’s holding in *People v. Proctor*, 570 P.2d 540 (Colo. 1977), by providing the jury with a supplemental instruction explaining that, for purposes of section 18-8-704(1)(a), the term “unlawfully” referred only to: “the time when the testimony is to be actually withheld, not to the time of the contact. That is, there is no requirement under the law that the victim is under legal summons or subpoena at the time the contact is made.”

4. The reference to the “crime of harassment” is included to comply with *People v. Hickman*, 988 P.2d 628, 643 (Colo. 1999) (holding that the phrase “act of harassment,” as it appeared in section 18-8-706 before that statute was amended to include an explicit reference to the offense of harassment, was unconstitutionally overbroad).

5. If the defendant is not charged with harassment, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. See Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment). Place the elemental instruction for harassment immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for harassment.

6. The term “legal process” is not defined by statute. See *Black’s Law Dictionary* 1399 (10th ed. 2014) (defining “process” as “[a] summons or writ, esp. to appear or respond in court.”).

7. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

8. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 7.

9. In 2018, the Committee modified the fourth element pursuant to a legislative amendment. See Ch. 162, sec. 1, § 18-8-704(1), 2018 Colo. Sess. Laws 1127, 1127.

8-7:05

**Aggravated Intimidation of a Witness or Victim (Armed  
With a Deadly Weapon)**

The elements of the crime of aggravated intimidation of a witness or victim (armed with a deadly weapon) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. by use of a threat, or by committing the crime of harassment, or by committing an act of harm or injury to any person or property,
4. directed to or committed upon a witness or a victim to any crime, a person the defendant believed had been or was to be called or who would have been called to testify as a witness or a victim, a member of the witness' family, a member of the victim's family, a person in close relationship to the witness or victim, a person residing in the same household with the witness or victim, or any person who had reported a crime or who might have been called to testify as a witness to or victim of any crime,
5. intentionally,
6. attempted to, or did: influence the witness or victim to testify falsely or unlawfully withhold any testimony; induce the witness or victim to avoid legal process summoning him [her] to testify; induce the witness or victim to absent himself [herself] from an official proceeding; or inflict such harm or injury prior to such testimony or expected testimony, and
7. during the act of intimidating, he [she] was



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armed with a deadly weapon with the intent, if resisted, to kill, maim, or wound the person being intimidated or any other person.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aggravated intimidation of a witness or victim (armed with a deadly weapon).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aggravated intimidation of a witness or victim (armed with a deadly weapon).

### COMMENT

1. See § 18-8-705(1)(a), C.R.S. 2019 (incorporating section 18-8-704(1), C.R.S. 2019).

2. See Instruction F:88 (defining “deadly weapon”); Instruction F:185 (defining “intentionally”); Instruction F:250 (defining “official proceeding”); Instruction F:388 (defining “victim”); Instruction F:393 (defining “witness”).

3. The reference to the “crime of harassment” is included to comply with *People v. Hickman*, 988 P.2d 628, 643 (Colo. 1999) (holding that the phrase “act of harassment,” as it appeared in section 18-8-706 before that statute was amended to include an explicit reference to the offense of harassment, was unconstitutionally overbroad).

4. If the defendant is not charged with harassment, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. See Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment). Place the elemental instruction for harassment immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for harassment.

5. The term “legal process” is not defined by statute. See *Black's*



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*Law Dictionary* 1399 (10th ed. 2014) (defining “process” as “A summons or writ, esp. to appear or respond in court.”).

6. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

7. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 6.

### 8-7:06

#### **Aggravated Intimidation of a Witness or Victim (Use of a Deadly Weapon)**

**The elements of the crime of aggravated intimidation of a witness or victim (use of a deadly weapon) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. by use of a threat, or by committing the crime of harassment, or by committing an act of harm or injury to any person or property,**
- 4. directed to or committed upon a witness or a victim to any crime, a person the defendant believed had been or was to be called or who would have been called to testify as a witness or a victim, a member of the witness’ family, a member of the victim’s family, a person in close relationship to the witness or victim, a person residing in the same household with the witness or victim, or any person who had reported a crime or who might have been called to testify as a witness to or victim of any crime,**
- 5. intentionally,**

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6. attempted to, or did, influence the witness or victim to testify falsely or unlawfully withhold any testimony; induce the witness or victim to avoid legal process summoning him [her] to testify; induce the witness or victim to absent himself [herself] from an official proceeding; or inflict such harm or injury prior to such testimony or expected testimony, and

7. during the act of intimidating, he [she] knowingly wounded the person being intimidated or any other person with a deadly weapon, or by the use of force, threats, or intimidation with a deadly weapon knowingly put the person being intimidated or any other person in reasonable fear of death or bodily injury.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aggravated intimidation of a witness or victim (use of a deadly weapon).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aggravated intimidation of a witness or victim (use of a deadly weapon).

## COMMENT

1. See § 18-8-705(1)(b), C.R.S. 2019 (incorporating section 18-8-704(1), C.R.S. 2019).

2. See Instruction F:88 (defining “deadly weapon”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:250 (defining “official proceeding”); Instruction F:388 (defining “victim”); Instruction F:393 (defining “witness”).



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3. The reference to the “crime of harassment” is included to comply with *People v. Hickman*, 988 P.2d 628, 643 (Colo. 1999) (holding that the phrase “act of harassment,” as it appeared in section 18-8-706 before that statute was amended to include an explicit reference to the offense of harassment, was unconstitutionally overbroad).

4. If the defendant is not charged with harassment, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. *See* Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment). Place the elemental instruction for harassment immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for harassment.

5. The term “legal process” is not defined by statute. *See Black’s Law Dictionary* 1399 (10th ed. 2014) (defining “process” as “A summons or writ, esp. to appear or respond in court.”).

6. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

7. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 6.

### 8-7:07.SP

#### **Aggravated Intimidation of a Witness or Victim—Special Instruction (Deadly Weapon)**

**Possession of any article used or fashioned in a manner to lead any person reasonably to believe it to be a deadly weapon, or any verbal or other representation by the person that he [she] was so armed, gives rise to a permissible inference that the person was armed with a deadly weapon.**

**A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.**

**You must bear in mind that the prosecution**



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always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

### COMMENT

1. See § 18-8-705(2), C.R.S. 2019.
2. See Instruction F:88 (defining “deadly weapon”).
3. Although the statute speaks in terms of “prima facie evidence,” the concept should be explained as a permissible inference. See *People in re R.M.D.*, 829 P.2d 852 (Colo. 1992) (construing a “prima facie” proof provision as establishing a permissible inference); see generally *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

### 8-7:08

#### Retaliation Against a Witness or Victim

The elements of the crime of retaliation against a witness or victim are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. used a threat, an act constituting the crime of harassment, or an act of harm or injury upon any person or property,
4. directed to, or committed upon, a witness in any criminal or civil proceeding, a victim of any crime, an individual whom the defendant believed had been or would be called to testify as a witness in any criminal or civil proceeding or a victim of any crime, a member of the witness’s family, a member of the victim’s family, an individual in close relationship to the witness or victim, or an individual residing in the same household with the witness or victim,

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**5. as retaliation or retribution against the witness or victim.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of retaliation against a witness or victim.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of retaliation against a witness or victim.**

### COMMENT

1. See § 18-8-706(1), C.R.S. 2019.

2. See Instruction F:388 (defining “victim”); Instruction F:393 (defining “witness”); Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment).

3. The term “threat” is not defined by statute. See *People v. Hickman*, 988 P.2d 628, 637 (Colo. 1999) (“Colorado caselaw defines threat and provides a basis for presuming that the General Assembly intended to use this definition, and we find support for this definition in other sources. Our analysis of the constitutionality of section 18-8-706 also suggests that threat should be interpreted in a narrow fashion. Thus, we construe threat in section 18-8-706 to mean an expression of an intent or statement of purpose to commit harm or injury to another’s person, property, or rights through the commission of unlawful acts.”).

4. The reference to the “crime of harassment” is included to comply with *People v. Hickman*, 988 P.2d 628, 643 (Colo. 1999) (holding that the phrase “act of harassment,” as it appeared in section 18-8-706 before that statute was amended to include an explicit reference to the offense of harassment, was unconstitutionally overbroad).

5. If the defendant is not charged with harassment, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. See Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment). Place the elemental instruction for harassment immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for harassment.



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6. + *See People v. Johnson*, 2017 COA 11, ¶ 30, 446 P.3d 826, 831 (“[W]e conclude that section 18-8-706 applies only to retaliation against witnesses or victims because of their relationship to criminal, and not civil, proceedings.”).

7. In 2018, the Committee modified the fourth element pursuant to a legislative amendment. *See* Ch. 162, sec. 2, § 18-8-706(1), 2018 Colo. Sess. Laws 1127, 1127 to 28.

8. + In 2019, the Committee added Comment 6.

**8-7:09**

### **Retaliation Against a Juror**

**The elements of the crime of retaliation against a juror are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. used a threat, an act constituting the crime of harassment, or an act of harm or injury upon any person or property,**
- 4. directed to, or committed upon, a juror who had served for a criminal or civil trial involving the defendant or a person or persons on whose behalf the defendant was acting, a member of the juror’s family, an individual in close relationship to the juror, or an individual residing in the same household with the juror,**
- 5. as retaliation or retribution against the juror.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of retaliation against a juror.**



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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of retaliation against a juror.**

### COMMENT

1. See § 18-8-706.5, C.R.S. 2019.

2. See Instruction F:192 (defining “juror”); Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment).

3. The term “threat” is not defined by statute. See *People v. Hickman*, 988 P.2d 628, 637 (Colo. 1999) (“Colorado caselaw defines threat and provides a basis for presuming that the General Assembly intended to use this definition, and we find support for this definition in other sources. Our analysis of the constitutionality of section 18-8-706 also suggests that threat should be interpreted in a narrow fashion. Thus, we construe threat in section 18-8-706 to mean an expression of an intent or statement of purpose to commit harm or injury to another’s person, property, or rights through the commission of unlawful acts.”).

4. The reference to the “crime of harassment” is included to comply with *People v. Hickman*, 988 P.2d 628, 643 (Colo. 1999) (holding that the phrase “act of harassment,” as it appeared in section 18-8-706 before that statute was amended to include an explicit reference to the offense of harassment, was unconstitutionally overbroad).

5. If the defendant is not charged with harassment, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. See Instructions 9-1:33, 9-1:34, 9-1:35, 9-1:36 (harassment). Place the elemental instruction for harassment immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for harassment.

## 8-7:10

### **Tampering With a Witness or Victim (Testimony)**

**The elements of the crime of tampering with a witness or victim (testimony) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

## VICTIMS AND WITNESSES PROTECTION

3. intentionally,

4. attempted,

5. without bribery or threats,

6. to induce a witness, a victim, a person the defendant believed was to be called to testify as a witness or victim in any official proceeding, or a person the defendant believed might be called to testify as a witness or victim of any crime,

7. to testify falsely or unlawfully withhold any testimony.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with a witness or victim (testimony).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with a witness or victim (testimony).

### COMMENT

1. See § 18-8-707(1)(a), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:250 (defining “official proceeding”); Instruction F:388 (defining “victim”); Instruction F:393 (defining “witness”).

3. See *People v. Cunefare*, 102 P.3d 302, 306–07 (Colo. 2004) (“Because the language of the intimidation statute is substantially similar to the language [of section 18-8-707], we hold that the same principles apply here. Reading the introductory portion of the statute together with subsection (1)(a), we interpret ‘testimony’ and ‘unlawfully withhold’ to protect statements that may be offered in the future, not



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just those already sworn or received as evidence. Accordingly, under subsection (1)(a), the witness or victim need not be under subpoena or legal summons at the time of the contact, and the defendant need not succeed in interfering with actual testimony of the victim or witness.”); *see also* Instruction 8-7:04, Comment 3 (discussing precedent interpreting the term “unlawfully” for purposes of the offense of intimidating a witness or victim).

4. + *See* *People v. Brooks*, 2017 COA 80, ¶ 14, 454 P.3d 270, 274 (“[T]he concept of attempt is built into the tampering statute—the crime is completed when a defendant ‘intentionally attempts’ to tamper with a victim or witness . . . . We conclude that no [crime for attempted tampering] exists because it would be illogical to recognize a crime premised on an attempt to attempt . . . .”).

5. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 4.

6. + In 2019, the Committee revised Comment 4 by citing to *Brooks*.

### 8-7:11

#### **Tampering With a Witness or Victim (Absenting)**

**The elements of the crime of tampering with a witness or victim (absenting) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. intentionally,**
- 4. attempted,**
- 5. without bribery or threats,**
- 6. to induce a witness, a victim, a person the defendant believed was to be called to testify as a witness or victim in any official proceeding, or a person the defendant believed might be called to testify as a witness or victim of any crime,**
- 7. to absent himself [herself] from any official proceeding to which he [she] had been legally summoned.**



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**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with a witness or victim (absenting).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with a witness or victim (absenting).**

### COMMENT

1. *See* § 18-8-707(1)(b), C.R.S. 2019.

2. *See* Instruction F:185 (defining “intentionally”); Instruction F:250 (defining “official proceeding”); Instruction F:388 (defining “victim”); Instruction F:393 (defining “witness”).

3. *See* *People v. Yascavage*, 101 P.3d 1090, 1096 (Colo. 2004) (the term “legally summoned,” as used in section 18-8-707(1)(b), “means some action taken by the official tribunal that obligates a witness to appear at an official proceeding”; “neither subsection (1)(a) nor subsection (1)(c) require such legal process in order to trigger the crime. Only subsection (1)(b) requires that element.”).

4. + *See* *People v. Brooks*, 2017 COA 80, ¶ 14, 454 P.3d 270, 274 (“[T]he concept of attempt is built into the tampering statute—the crime is completed when a defendant ‘intentionally attempts’ to tamper with a victim or witness . . . . We conclude that no [crime for attempted tampering] exists because it would be illogical to recognize a crime premised on an attempt to attempt . . . .”).

5. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 4.

6. + In 2019, the Committee revised Comment 4 by citing to *Brooks*.

8-7:12

**Tampering With a Witness or Victim (Process)**

The elements of the crime of tampering with a witness or victim (process) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. attempted,
5. without bribery or threats,
6. to induce a witness, a victim, a person the defendant believed was to be called to testify as a witness or victim in any official proceeding, or a person the defendant believed might be called to testify as a witness or victim of any crime,
7. to avoid legal process summoning him [her] to testify.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with a witness or victim (process).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with a witness or victim (process).

## OFFENSES RELATING TO USE OF FORCE BY PEACE OFFICERS

### COMMENT

1. See § 18-8-707(1)(c), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:250 (defining “official proceeding”); Instruction F:388 (defining “victim”); Instruction F:393 (defining “witness”).

3. The term “legal process” is not defined by statute. See *Black’s Law Dictionary* 1399 (10th ed. 2014) (defining “process” as “A summons or writ, esp. to appear or respond in court.”).

4. + See *People v. Brooks*, 2017 COA 80, ¶ 14, 454 P.3d 270, 274 (“[T]he concept of attempt is built into the tampering statute—the crime is completed when a defendant ‘intentionally attempts’ to tamper with a victim or witness . . . We conclude that no [crime for attempted tampering] exists because it would be illogical to recognize a crime premised on an attempt to attempt . . .”).

5. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 4.

6. + In 2019, the Committee revised Comment 4 by citing to *Brooks*.

## CHAPTER 8-8

## OFFENSES RELATING TO USE OF FORCE BY PEACE OFFICERS

### CHAPTER COMMENTS

1. Section 18-8-803(1), C.R.S. 2019, provides as follows:

Subject to the provisions of section 18-1-707, a peace officer who uses excessive force in pursuance of such officer’s law enforcement duties shall be subject to the criminal laws of this state to the same degree as any other citizen, including the provisions of part 1 of article 3 of this title concerning homicide and related offenses and the provisions of part 2 of said article 3 concerning assaults.

The Committee views this provision as stating a principle of law for the court to apply. Accordingly, the Committee has not drafted a model instruction embodying it.

### 8-8:01

#### Failure to Report Excessive Force

**The elements of the crime of failure to report excessive force are:**



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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was a peace officer, and
  4. in pursuance of his [her] law enforcement duties,
  5. witnessed another peace officer, in pursuance of the other peace officer's law enforcement duties in carrying out an arrest of any person, placing any person under detention, taking any person into custody, booking any person, or in the process of crowd control or riot control,
  6. use physical force which exceeded the degree of physical force permitted, and
  7. the defendant did not, within ten days of the occurrence of the use of such force, submit a written report, to his [her] immediate supervisor, that included the date, time, and place of the occurrence, the identity (if known) and description of the participants, and a description of the events and the force used.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to report excessive force.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to report excessive force.

## OFFENSES RELATING TO USE OF FORCE BY PEACE OFFICERS

### COMMENT

1. See § 18-8-802(1)(a) to (c), C.R.S. 2019.
2. See Instruction F:263 (defining “peace officer”).

3. The court should draft a supplemental instruction, tailored to the facts of the case, explaining the relevant principles by which the jury is to make its determination concerning “the degree of physical force permitted.” See Instructions H:19, H:20, H:25, H:26, H:27.SP, H:28.SP, H:29.SP (affirmative defense instructions, pursuant to section 18-1-707, C.R.S. 2019, that explain when it is lawful for a peace officer to use physical force, including deadly physical force).

4. It may be necessary to draft a supplemental instruction explaining what other types of written reports satisfy the requirements of this statute. See § 18-8-802(1)(b), C.R.S. 2019 (“A copy of an arrest report or other similar report required as a part of a peace officer’s duties can be substituted for the report required by this section, so long as it includes such information.”).

### 8-8:02

#### **False Reporting to Authorities (Excessive Force)**

**The elements of the crime of false reporting to authorities (excessive force) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a peace officer, and
4. knowingly,
5. in pursuance of his [her] law enforcement duties,
6. witnessed another peace officer, in pursuance of the other peace officer’s law enforcement duties in carrying out an arrest of any person, placing any person under detention, taking any person into custody, booking any person, or in the process of crowd control or riot control,

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**7. use physical force which exceeded the degree of physical force permitted, and**

**8. the defendant made a materially false statement when describing the occurrence in a written report to his [her] immediate supervisor, or in an arrest report or other similar report required as part of his [her] duties.**

**[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false reporting to authorities (excessive force).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false reporting to authorities (excessive force).**

**COMMENT**

1. See § 18-8-802(2), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:220 (defining “materially false statement”); Instruction F:263 (defining “peace officer”).

3. The court should draft a supplemental instruction, tailored to the facts of the case, explaining the relevant principles by which the jury is to make its determination concerning “the degree of physical force permitted.” See Instructions H:19, H:20, H:25, H:26, H:27.SP, H:28.SP, H:29.SP (affirmative defense instructions, pursuant to section 18-1-707, C.R.S. 2019, that explain when it is lawful for a peace officer to use physical force, including deadly physical force).



8-8:03.SP

**Failure to Report Excessive Force and False Reporting to  
Authorities (Excessive Force)—Special Instruction  
(Excessive Force; Incapable of Resisting)**

**“Excessive force” means physical force which exceeds the degree of physical force permitted pursuant to these instructions.**

**Evidence that a peace officer continued to apply physical force in excess of the force permitted by these instructions to a person who had been rendered incapable of resisting arrest gives rise to a permissible inference of excessive force.**

**A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.**

**You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.**

**COMMENT**

1. *See* § 18-8-803(2), C.R.S. 2019.

2. The Committee has not drafted a model instruction defining “excessive force.” The court should draft a supplemental instruction, tailored to the facts of the case, explaining the relevant provisions of section 18-1-707, C.R.S. 2019. *See* Instructions H:19, H:20, H:25, H:26, H:27.SP, H:28.SP, H:29.SP (affirmative defense instructions, pursuant to section 18-1-707, that explain when it is lawful for a peace officer to use reasonable physical force, including deadly physical force). *See also* Instructions 8-1:02 and 8-1:03 (resisting arrest).

**CHAPTER 9-1**

**OFFENSES AGAINST PUBLIC PEACE AND  
ORDER**

**9-1:01**

**Inciting a Riot (Incite or Urge)**

The elements of the crime of inciting a riot (incite or urge) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. incited or urged a group of five or more persons,
4. to engage in a current or impending riot.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of inciting a riot (incite or urge).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inciting a riot (incite or urge).

**COMMENT**

1. See § 18-9-102(1)(a), C.R.S. 2019.
2. See Instruction F:324 (defining "riot").

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3. *See* *People v. Mullins*, 209 P.3d 1147, 1150 (Colo. App. 2008) (self-defense is an affirmative defense to inciting a riot).

### 9-1:02

#### Inciting a Riot (Furtherance)

The elements of the crime of inciting a riot (furtherance) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. gave commands, instructions, or signals,
4. to a group of five or more persons,
5. in furtherance of a riot.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of inciting a riot (furtherance).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inciting a riot (furtherance).

#### COMMENT

1. *See* § 18-9-102(1)(b), C.R.S. 2019.

2. *See* Instruction F:324 (defining "riot").

3. *See* *People v. Mullins*, 209 P.3d 1147, 1150 (Colo. App. 2008) (self-defense is an affirmative defense to inciting a riot).



9-1:03.INT

**Inciting a Riot—Interrogatory (Injury or Damage)**

If you find the defendant not guilty of inciting a riot, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of inciting a riot, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the inciting cause injury or damage? (Answer “Yes” or “No”)**

**The inciting caused injury or damage only if:**

1. the inciting of a riot resulted in injury to a person or damage to property.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

**COMMENT**

1. See § 18-9-102(3), C.R.S. 2019.

2. See Instruction F:36 (defining “bodily injury”); see, e.g., Instruction E:28 (special verdict form).

## OFFENSES AGAINST PUBLIC PEACE AND ORDER

9-1:04

### Arming Rioters (Supply)

The elements of the crime of arming rioters (supply) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. supplied a deadly weapon or destructive device,
  5. for use in a riot.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of arming rioters (supply).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of arming rioters (supply).

#### COMMENT

1. See § 18-9-103(1)(a), C.R.S. 2019.

2. See Instruction F:88 (defining “deadly weapon”); Instruction F:94 (defining “destructive device”); Instruction F:324 (defining “riot”).

9-1:05

**Arming Rioters (Teach)**

The elements of the crime of arming rioters (teach) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. taught another to prepare or use a deadly weapon or destructive device,
4. with intent,
5. that any such thing be used in a riot.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of arming rioters (teach).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of arming rioters (teach).

**COMMENT**

1. See § 18-9-103(1)(b), C.R.S. 2019.

2. See Instruction F:88 (defining “deadly weapon”); Instruction F:94 (defining “destructive device”); Instruction F:185 (defining “with intent”); Instruction F:324 (defining “riot”).



9-1:06

### Engaging in a Riot

The elements of the crime of engaging in a riot are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. engaged in a riot.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of engaging in a riot.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of engaging in a riot.

### COMMENT

1. See § 18-9-104(1), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:324 (defining “riot”); see also *People v. Bridges*, 620 P.2d 1, 3 (Colo. 1980) (“We conclude that the mental state ‘knowingly’ is implied by the statute and is required for the offense of engaging in a riot.”).

3. See *People v. Mullins*, 209 P.3d 1147, 1150 (Colo. App. 2008) (self-defense is an affirmative defense to engaging in a riot).

9-1:07.INT

**Engaging in a Riot—Interrogatory**

If you find the defendant not guilty of engaging in a riot, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of engaging in a riot, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Was the defendant's engagement aggravated?  
(Answer "Yes" or "No")**

**The defendant's engagement was aggravated only if:**

- 1. in the course of rioting,**
- 2. the defendant employed a deadly weapon, a destructive device, or any article used or fashioned in a manner to cause a person to reasonably believe that the article was a deadly weapon; or represented verbally or otherwise that he [she] was armed with a deadly weapon.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark "Yes" in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this this burden, you should mark "No" in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

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### COMMENT

1. *See* § 18-9-104(1), C.R.S. 2019.

2. *See* Instruction F:88 (defining “deadly weapon”); Instruction F:94 (defining “destructive device”); *see, e.g.*, Instruction E:28 (special verdict form).

3. *See* *People v. Rivas*, 77 P.3d 882, 888 (Colo. App. 2003) (the General Assembly did not intend that a culpable mental state apply to the sentence enhancing factors for the offense of engaging in a riot).

### 9-1:08.SP

#### **Inciting or Engaging in a Riot—Special Instruction (Attempt, Conspiracy, and Solicitation)**

**A person may be convicted of attempt, conspiracy, or solicitation to incite or engage in a riot only if he [she] engaged in the prohibited conduct with respect to a current or impending riot.**

### COMMENT

1. *See* § 18-9-102(2), C.R.S. 2019.

### 9-1:09

#### **Disobedience of a Public Safety Order Under Riot Conditions**

**The elements of the crime of disobedience of a public safety order under riot conditions are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. during a riot or when a riot was impending,
5. disobeyed a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot.



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**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of disobedience of a public safety order under riot conditions.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of disobedience of a public safety order under riot conditions.**

**COMMENT**

1. *See* § 18-9-105, C.R.S. 2019.
2. *See* Instruction F:195 (defining “knowingly”); Instruction F:305 (defining “public safety order”); Instruction F:324 (defining “riot”).
3. *See* Instruction H:54 (affirmative defense of “news reporter or media person”).

**9-1:10**

**Disorderly Conduct (Coarse and Obviously Offensive)**

**The elements of the crime of disorderly conduct (coarse and obviously offensive) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally, knowingly, or recklessly,
4. made a coarse and obviously offensive utterance, gesture, or display,
5. in a public place, and

## OFFENSES AGAINST PUBLIC PEACE AND ORDER

6. the utterance, gesture, or display tended to incite an immediate breach of the peace.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of disorderly conduct (coarse and obviously offensive).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of disorderly conduct (coarse and obviously offensive).

### COMMENT

1. See § 18-9-106(1)(a), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:303 (defining “public place”); Instruction F:308 (defining “recklessly”).

### 9-1:11

#### Disorderly Conduct (Unreasonable Noise)

The elements of the crime of disorderly conduct (unreasonable noise) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally, knowingly, or recklessly,
4. made unreasonable noise,
5. in a public place or near a private residence that he [she] had no right to occupy.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of disorderly conduct (unreasonable noise).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of disorderly conduct (unreasonable noise).

COMMENT

1. See § 18-9-106(1)(c), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:303 (defining “public place”); Instruction F:308 (defining “recklessly”).

9-1:12.INT

**Disorderly Conduct (Coarse and Obviously Offensive;  
Unreasonable Noise)—Interrogatory (Funeral)**

If you find the defendant not guilty of disorderly conduct ([coarse and obviously offensive] [unreasonable noise]), you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of ([coarse and obviously offensive] [unreasonable noise]), you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Was the defendant disorderly at a funeral? (Answer “Yes” or “No”)**



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**The defendant was disorderly at a funeral only if:**

1. he [she] committed the offense with intent to disrupt, impair, or interfere with a funeral, or with intent to cause severe emotional distress to a person attending a funeral.

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. See § 18-9-106(3)(a), C.R.S. 2019.

2. See Instruction F:159 (defining “funeral”); see, e.g., Instruction E:28 (special verdict form).

3. Cf. *Snyder v. Phelps*, 131 S. Ct. 1207 (2011) (picketers near the funeral of a member of the military killed in the line of duty could not be held liable on state-law tort claims alleging intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy; picketers carried signs displaying messages that, for the most part, constituted speech addressing matters of public concern, and they conducted their picketing peacefully, without interfering with the funeral).

**9-1:13**

### **Disorderly Conduct (Fighting in Public)**

**The elements of the crime of disorderly conduct (fighting in public) are:**

1. That the defendant,

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- 2. in the State of Colorado, at or about the date and place charged,**
- 3. intentionally, knowingly, or recklessly,**
- 4. fought with another,**
- 5. in a public place,**
- 6. while not engaged in an amateur or professional contest of athletic skill.**
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of disorderly conduct (fighting in public).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of disorderly conduct (fighting in public).**

**COMMENT**

- 1. See § 18-9-106(1)(d), C.R.S. 2019.**
- 2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:303 (defining “public place”); Instruction F:308 (defining “recklessly”).**

**9-1:14**

**Disorderly Conduct (Discharge of a Firearm in a Public Place)**

**The elements of the crime of disorderly conduct (discharge of a firearm in a public place) are:**

- 1. That the defendant,**

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2. in the State of Colorado, at or about the date and place charged,
3. intentionally, knowingly, or recklessly,
4. discharged a firearm,
5. in a public place, and
6. he [she] was not a peace officer, and was not engaged in lawful target practice, hunting, or the ritual discharge of blank ammunition cartridges as an attendee at a funeral for a deceased person who was a veteran of the armed forces of the United States.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of disorderly conduct (discharge of a firearm in a public place).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of disorderly conduct (discharge of a firearm in a public place).

### COMMENT

1. See § 18-9-106(1)(e), C.R.S. 2019.

2. See Instruction F:154 (defining “firearm”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:263 (defining “peace officer”); Instruction F:303 (defining “public place”); Instruction F:308 (defining “recklessly”).



9-1:15

**Disorderly Conduct (Deadly Weapon; Display or Representation)**

The elements of the crime of disorderly conduct (deadly weapon; display or representation) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally, knowingly, or recklessly,
4. displayed a deadly weapon, or displayed any article used or fashioned in a manner to cause a person to reasonably believe that the article was a deadly weapon, or represented verbally or otherwise that he [she] was armed with a deadly weapon,
5. in a public place, and
6. in a manner calculated to alarm, and
7. the defendant was not a peace officer.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of disorderly conduct (deadly weapon; display or representation).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of disorderly conduct (deadly weapon; display or representation).

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### COMMENT

1. See § 18-9-106(1)(f), C.R.S. 2019.

2. See Instruction F:88 (defining “deadly weapon”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:263 (defining “peace officer”); Instruction F:303 (defining “public place”); Instruction F:308 (defining “recklessly”).

### 9-1:16

#### Obstructing a Highway or Other Passageway (Act)

The elements of the crime of obstructing a highway or other passageway (act) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally, knowingly, or recklessly,
4. without legal privilege,
5. obstructed a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway, or hallway to which the public or a substantial group of the public had access, or any other place used for the passage of persons, vehicles, or conveyances, and
6. the obstruction arose from the defendant’s acts alone, or the acts of the defendant and the acts of others.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-

**dant guilty of obstructing a highway or other passageway (act).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of obstructing a highway or other passageway (act).**

**COMMENT**

1. See § 18-9-107(1)(a), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:247 (defining “obstruct”); Instruction F:308 (defining “recklessly”).

**9-1:17**

**Obstructing a Highway or Other Passageway (Disobeying a Reasonable Request or Order)**

**The elements of the crime of obstructing a highway or other passageway (disobeying a reasonable request or order to move) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. intentionally, knowingly, or recklessly,**
- 4. without legal privilege,**
- 5. disobeyed a reasonable request or order to move,**
- 6. issued by a person the defendant knew was a peace officer, a firefighter, or a person with authority to control the use of the premises,**
- 7. to prevent obstruction of a highway or passageway, or to maintain public safety by dispers-**



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**ing those gathered in dangerous proximity to a fire, riot, or other hazard.**

**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of obstructing a highway or other passageway (disobeying a reasonable request or order to move).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of obstructing a highway or other passageway (disobeying a reasonable request or order to move).**

### COMMENT

1. *See* § 18-9-107(1)(b), C.R.S. 2019.

2. *See* Instruction F:157 (defining “firefighter”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:247 (defining “obstruct”); Instruction F:263 (defining “peace officer”); Instruction F:308 (defining “recklessly”); Instruction F:324 (defining “riot”); *see also* Instructions F:283, F:284 (alternative definitions of “premises,” for purposes of burglary and trespass offenses).

3. Section 18-9-107(1)(b) does not define the term “passageway.”

### 9-1:18.INT

#### **Obstructing a Highway or Other Passageway— Interrogatory (Funeral)**

**If you find the defendant not guilty of obstructing a highway or other passageway, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of**

obstructing a highway or other passageway, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant obstruct a funeral? (Answer “Yes” or “No”)**

**The defendant obstructed a funeral only if:**

**1. he [she] knowingly obstructed [the entrance into, or exit from, a funeral or funeral site] [a highway, or other passageway, where a funeral procession was taking place].**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

#### COMMENT

1. *See* § 18-9-107(3), C.R.S. 2019.

2. *See* Instruction F:159 (defining “funeral”); Instruction F:160 (defining “funeral site”); Instruction F:195 (defining “knowingly”); Instruction F:247 (defining “obstruct”); *see, e.g.*, Instruction E:28 (special verdict form).

3. The term “funeral procession” is not defined by statute.

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9-1:19

### Disrupting a Lawful Assembly

The elements of the crime of disrupting a lawful assembly are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to prevent or disrupt any lawful meeting, procession, or gathering,
5. significantly obstructed or interfered with the meeting, procession, or gathering,
6. by physical action, verbal utterance, or any other means.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of disrupting a lawful assembly.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of disrupting a lawful assembly.

#### COMMENT

1. See § 18-9-108(1), C.R.S. 2019.
2. See Instruction F:185 (defining “with intent”).



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3. *See* *Dempsey v. People*, 117 P.3d 800, 807–08 (Colo. 2005) (holding that the disrupting statute was not unconstitutional, as applied, because it focuses on conduct, not speech).

### **9-1:20.INT**

#### **Disrupting a Lawful Assembly—Interrogatory**

If you find the defendant not guilty of disrupting a lawful assembly, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of disrupting a lawful assembly, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant commit the crime of disrupting a lawful assembly by disrupting a funeral?  
(Answer “Yes” or “No”)**

**The defendant committed the crime of disrupting a lawful assembly by disrupting a funeral only if:**

- 1. defendant knew the meeting, procession, or gathering was a funeral.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

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### COMMENT

1. See § 18-9-108(2), C.R.S. 2019.

2. See Instruction F:159 (defining “funeral”); see, e.g., Instruction E:28 (special verdict form).

### 9-1:21

#### Targeted Residential Picketing (Route or Location)

The elements of the crime of targeted residential picketing (route or location) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. engaged in targeted picketing, and
  4. did so in a manner other than by marching, without stopping in front or on either side of a residence, over a route that proceeded a distance that extended beyond three adjacent structures to one side of the targeted residence along the one-way length and three adjacent structures to the other side of the targeted residence along the one-way length or three hundred feet to one side of the targeted residence along the one-way length and three hundred feet to the other side of the targeted residence along the one-way length, whichever distance was shorter, and
  5. had previously been ordered by a peace officer or law enforcement official to move, disperse, or take other appropriate action, by means of a warning that included an indication of the required distances that persons engaging in picketing must march, and
  6. failed to promptly comply with the warning.
- [7. and that the defendant’s conduct was not

**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of targeted residential picketing (route or location).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of targeted residential picketing (route or location).**

**COMMENT**

1. See § 18-9-108.5(3)(a), C.R.S. 2019.
2. See Instruction F:316 (defining “residence”); Instruction F:362 (defining “targeted picketing”).

3. Section 18-9-108.5(4), C.R.S. 2019, provides as follows:

Vehicles or trailers used in targeted picketing shall not park within three residences or three hundred feet of a residence that is the subject of targeted picketing. There is a presumption that a vehicle or trailer is used in targeted picketing when signage is affixed to the vehicle containing content related to the targeted picketing.

It appears that, rather than establishing an independent basis for criminal liability, this provision was enacted to provide a basis for a police officer to require that a protestor move his [her] vehicle. Accordingly, the Committee has not drafted a model instruction embodying this provision.

4. Cf. *Snyder v. Phelps*, 131 S. Ct. 1207 (2011) (picketers near the funeral of a member of the military killed in the line of duty could not be held liable on state-law tort claims alleging intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy; picketers carried signs displaying messages that, for the most part, constituted speech addressing matters of public concern, and they conducted their picketing peacefully, without interfering with the funeral).



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9-1:22

**Targeted Residential Picketing (Sign or Placard)**

The elements of the crime of targeted residential picketing (sign or placard) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. engaged in targeted picketing, and
  4. held, carried, or otherwise displayed on his [her] person a sign or placard that was greater in size than six square feet, or more than one sign or placard,
  5. while he [she] was on a street or sidewalk in a residential area, and
  6. had previously been ordered by a peace officer or law enforcement official to move, disperse, or take other appropriate action, by means of a warning that included an indication of the necessary conditions for signs or placards, and
  7. failed to promptly comply with the warning.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of targeted residential picketing (sign or placard).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more

**of the elements beyond a reasonable doubt, you should find the defendant not guilty of targeted residential picketing (sign or placard).**

**COMMENT**

1. See § 18-9-108.5(3)(b), C.R.S. 2019.

2. See Instruction F:316 (defining “residence”); Instruction F:362 (defining “targeted picketing”).

3. Section 18-9-108.5(4), C.R.S. 2019, provides as follows:

Vehicles or trailers used in targeted picketing shall not park within three residences or three hundred feet of a residence that is the subject of targeted picketing. There is a presumption that a vehicle or trailer is used in targeted picketing when signage is affixed to the vehicle containing content related to the targeted picketing.

It appears that, rather than establishing an independent basis for criminal liability, this provision was enacted to provide a basis for a police officer to require that a protestor move his [her] vehicle. Accordingly, the Committee has not drafted a model instruction embodying this provision.

4. *Cf. Snyder v. Phelps*, 131 S. Ct. 1207 (2011) (picketers near the funeral of a member of the military killed in the line of duty could not be held liable on state-law tort claims alleging intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy; picketers carried signs displaying messages that, for the most part, constituted speech addressing matters of public concern, and they conducted their picketing peacefully, without interfering with the funeral).

**9-1:23**

**Interference With Staff, Faculty, or Students of Educational Institutions (Movement, Use, or Ingress and Egress)**

**The elements of the crime of interference with staff, faculty, or students of educational institutions (movement, use, or ingress and egress) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**

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3. willfully,
4. was on or near the premises or facilities of any educational institution, and
5. denied to students, school officials, employees, and invitees,
6. lawful freedom of movement on the premises; or lawful use of the property or facilities of the institution; or the right of lawful ingress and egress to the institution's physical facilities.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference with staff, faculty, or students of educational institutions (movement, use, or ingress and egress).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference with staff, faculty, or students of educational institutions (movement, use, or ingress and egress).

### COMMENT

1. See § 18-9-109(1)(a) to (c), C.R.S. 2019.
2. See Instruction F:195 (defining "willfully").
3. See Instruction H:55 (affirmative defense of "lawful assembly").
4. The fifth element uses a conjunction in order to be consistent with the language of the statute (i.e., "students, school officials, employees, and invitees"). However, this may be a legislative drafting error since the name of the offense is a disjunctive list.
5. Likewise, the sixth element uses a conjunction in order to be con-



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sistent with the language of the statute (i.e., “ingress and egress”). However, it is unclear whether the General Assembly intended to require proof that the defendant’s conduct resulted in a denial of both ingress and egress (or it may be the case that the General Assembly was of the view that the denial of either necessarily results in a denial of both).

6. *See* *People v. Moore*, 2013 COA 86, ¶ 13, 338 P.3d 348, 350 (“we interpret the phrase ‘public official or employee’ in section 18-9-110(2) to apply only to a victim who is either an official or an employee of a public entity. Contrary to the trial court’s reading, the adjective ‘public’ modifies both ‘official[.]’ and ‘[.]employee.’”).

7. In 2015, the Committee added Comment 6, citing to *People v. Moore*, *supra*.

### 9-1:24

#### **Interference With Staff, Faculty, or Students of Educational Institutions (Impeded)**

**The elements of the crime of interference with staff, faculty, or students of educational institutions (impeded) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. willfully,**
- 4. was on the premises of any educational institution, or at or in any building or other facility being used by any educational institution, and**
- 5. impeded the staff or faculty of the institution in the lawful performance of their duties, or impeded a student of the institution in the lawful pursuit of his [her] educational activities,**
- 6. through the use of restraint, abduction, coercion or intimidation, or when force or violence were present or threatened.**

**[7. and that the defendant’s conduct was not**

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legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference with staff, faculty, or students of educational institutions (impeded).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference with staff, faculty, or students of educational institutions (impeded).

### COMMENT

1. See § 18-9-109(2), C.R.S. 2019.
2. See Instruction F:195 (defining “willfully”).
3. See Instruction H:55 (affirmative defense of “lawful assembly”).
4. See *People in the Interest of C.F.*, 2012 COA 75, ¶¶ 15–20, 279 P.3d 1231, 1235–36 (holding, in a case involving a bomb threat communicated by telephone, that section 18-9-102(2) requires proof that the defendant was at the institution when he interfered with school operations).

### 9-1:25

#### **Interference With Staff, Faculty, or Students of Educational Institutions (Refusing or Failing to Leave)**

The elements of the crime of interference with staff, faculty, or students of educational institutions (refusing or failing to leave) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. willfully,

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**4. refused or failed to leave the property of or any building or facility used by any educational institution,**

**5. upon being requested to do so by the chief administrative officer, his [her] designee charged with maintaining order on the school premises and in its facilities, or a dean of the educational institution, and**

**6. the defendant was committing, threatened to commit, or incited others to commit any act which would disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions of the institution.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference with staff, faculty, or students of educational institutions (refusing or failing to leave).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference with staff, faculty, or students of educational institutions (refusing or failing to leave).**

**COMMENT**

1. See § 18-9-109(3), C.R.S. 2019.

2. See Instruction F:195 (defining “willfully”).

3. See Instruction H:55 (affirmative defense of “lawful assembly”).



9-1:26

**Interference With Staff, Faculty, or Students of  
Educational Institutions (Credible Threat)**

The elements of the crime of interference with staff, faculty, or students of educational institutions (credible threat) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. made or conveyed to another person a credible threat to cause death, or to cause bodily injury with a deadly weapon,
  5. against a person the defendant knew or believed to be a student, school official, employee of an educational institution, or an invitee who was on the premises of an educational institution.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference with staff, faculty, or students of educational institutions (credible threat).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference with staff, faculty, or students of educational institution (credible threat).

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**COMMENT**

1. See § 18-9-109(6)(a), C.R.S. 2019.

2. See Instruction F:36 (defining “bodily injury”); Instruction F:78 (defining “credible threat”); Instruction F:88 (defining “deadly weapon”); Instruction F:195 (defining “knowingly”).

**9-1:27**

**Interference At a Public Building (Denied)**

**The elements of the crime of interference at a public building (denied) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. willfully,**
- 4. was at or in any public building owned, operated, or controlled by the state, or any of the political subdivisions of the state, or at any building owned, operated, or controlled by the federal government, and**
- 5. denied to any public official, public employee, or invitee on such premises the lawful rights of such official, employee or invitee to enter, to use the facilities of, or to leave any such public building.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference at a public building (denied).**

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference at a public building (denied).**

### COMMENT

1. See § 18-9-110(1), C.R.S. 2019.

2. See Instruction F:195 (defining “willfully”); Instruction F:298 (defining “public building”).

3. + See *People v. Rediger*, 2018 CO 32, ¶ 21, 416 P.3d 893, 899 (holding that, for the purposes of section 18-9-110(1), the term “public employee” means “a person who works in the service of a governmental entity under an express or implied contract of hire, under which the governmental entity has the right to control the details of the person’s work performance”).

4. + In 2019, the Committee added Comment 3.

### 9-1:28

#### Interference At a Public Building (Impeded)

**The elements of the crime of interference at a public building (impeded) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. willfully,
4. was at or in any public building owned, operated, or controlled by the state, or any of the political subdivisions of the state, or at any building owner, operated, or controlled by the federal government, and
5. impeded any public official or public employee in the lawful performance of duties or activities,



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**6. through the use of restraint, abduction, coercion, or intimidation, or by force and violence or threat thereof.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference at a public building (impeded).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference at a public building (impeded).**

### COMMENT

1. See § 18-9-110(2), C.R.S. 2019.

2. See Instruction F:195 (defining “willfully”); Instruction F:298 (defining “public building”).

### 9-1:29

#### **Refusing or Failing to Leave a Public Building**

**The elements of the crime of refusing or failing to leave a public building are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. willfully,**
- 4. was at or in any public building owned, operated, or controlled by the state, or any of the political subdivisions of the state, or at any building**

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owner, operated, or controlled by the federal government, and

5. refused or failed to leave the public building,

6. upon being requested to do so by the chief administrative officer or his [her] designee charged with maintaining order in the public building, and

7. the defendant committed, was committing, threatened to commit, or incited others to commit any act which did, or would have if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions being carried on in the public building.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of refusing or failing to leave a public building.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of refusing or failing to leave a public building.

### COMMENT

1. See § 18-9-110(3), C.R.S. 2019.

2. See Instruction F:195 (defining “willfully”); Instruction F:298 (defining “public building”).

9-1:30

**Impeding Proceedings in a Public Building**

The elements of the crime of impeding proceedings in a public building are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. willfully,
4. at any meeting or session conducted by any judicial, legislative, or administrative body or official at or in any public building,
5. impeded, disrupted, or hindered the normal proceedings of such meeting or session,
6. by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting the meeting or session or by any act designed to intimidate, coerce, or hinder any member of such body or official engaged in the performance of duties at such meeting or session.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of impeding proceedings in a public building.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you



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**should find the defendant not guilty of impeding proceedings in a public building.**

### COMMENT

1. See § 18-9-110(4), C.R.S. 2019.

2. See Instruction F:195 (defining “willfully”); Instruction F:298 (defining “public building”).

### 9-1:31

#### Intrusion in a Public Building

**The elements of the crime of intrusion in a public building are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. willfully,**
- 4. intruded into the chamber or other areas designated for the use of any executive body or official at or in any public building, and**
- 5. impeded, disrupted, or hindered the normal proceedings of such body or official.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of intrusion in a public building.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you**

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**should find the defendant not guilty of intrusion in a public building.**

### COMMENT

1. See § 18-9-110(5), C.R.S. 2019.
2. See Instruction F:195 (defining “willfully”); Instruction F:298 (defining “public building”).

### 9-1:32

#### Picketing in a Public Building

**The elements of the crime of picketing in a public building are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. picketed, either alone or in concert with another,
4. inside any building in which the chambers, galleries, or offices of the general assembly, or either house thereof, was located, or in which the legislative office of any member of the general assembly was located, or in which a legislative hearing or meeting was being, or was to be, conducted.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of picketing in a public building.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you**

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**should find the defendant not guilty of picketing in a public building.**

### COMMENT

1. *See* § 18-9-110(6), C.R.S. 2019.

2. *See* Instruction F:298 (defining “public building”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. *Cf.* *Snyder v. Phelps*, 131 S. Ct. 1207 (2011) (picketers near the funeral of a member of the military killed in the line of duty could not be held liable on state-law tort claims alleging intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy; picketers carried signs displaying messages that, for the most part, constituted speech addressing matters of public concern, and they conducted their picketing peacefully, without interfering with the funeral).

**9-1:33**

### Harassment (Physical Contact)

**The elements of the crime of harassment (physical contact) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to harass, annoy, or alarm another person,
5. struck, shoved, kicked, or otherwise touched a person, or subjected him [her] to physical contact.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harassment (physical contact).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harassment (physical contact).

#### COMMENT

1. See § 18-9-111(1)(a), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”).

3. The terms “annoy” and “alarm” are not defined by statute. See *Bolles v. People*, 541 P.2d 80, 82–83 (Colo. 1975) (“According to *Webster’s New International Dictionary of the English Language*, (3d ed. Unabridged, 1961), ‘annoy’ means ‘to irritate with a nettling or exasperating effect.’ ‘Nettling’ means ‘to arouse displeasure, impatience, or anger in: provoke, vex.’ ‘Alarm’ means ‘to arouse to a sense of danger; to put on the alert; to strike with fear; fill with anxiety as to threaten danger or harm.’”); see also *People v. McBurney*, 750 P.2d 916, 919 (Colo. 1988) (“In fact, we found the previous section 18-9-111(1)(e) overbroad in *Bolles* not because of the mere presence of the words ‘annoy’ and ‘alarm,’ but because these words were applied to *all* forms of communication, which obviously contained no particularized standards to limit the scope of the offense.”).

#### 9-1:34

#### Harassment (Obscene)

The elements of the crime of harassment (obscene) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to harass, annoy, or alarm another person,

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5. in a public place,

6. directed obscene language at, or made an obscene gesture to, another person.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harassment (obscene).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harassment (obscene).

### COMMENT

1. See § 18-9-111(1)(b), C.R.S. 2019.

2. See Instruction F:185 (defining "with intent"); Instruction F:246 (defining "obscene"); Instruction F:303 (defining "public place").

3. The terms "annoy" and "alarm" are not defined by statute. See *Bolles v. People*, 541 P.2d 80, 82–83 (Colo. 1975) ("According to *Webster's New International Dictionary of the English Language*, (3d ed. Unabridged, 1961), 'annoy' means 'to irritate with a nettling or exasperating effect.' 'Nettling' means 'to arouse displeasure, impatience, or anger in: provoke, vex.' 'Alarm' means 'to arouse to a sense of danger; to put on the alert; to strike with fear; fill with anxiety as to threaten danger or harm.'"); see also *People v. McBurney*, 750 P.2d 916, 919 (Colo. 1988) ("In fact, we found the previous section 18-9-111(1)(e) overbroad in *Bolles* not because of the mere presence of the words 'annoy' and 'alarm,' but because these words were applied to *all* forms of communication, which obviously contained no particularized standards to limit the scope of the offense.").

### 9-1:35

#### Harassment (Follow)

The elements of the crime of harassment (follow) are:



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1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to harass, annoy, or alarm another person,
5. followed a person in or about a public place.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harassment (follow).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harassment (follow).

### COMMENT

1. See § 18-9-111(1)(c), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:303 (defining “public place”).

3. The terms “annoy” and “alarm” are not defined by statute. See *Bolles v. People*, 541 P.2d 80, 82–83 (Colo. 1975) (“According to *Webster’s New International Dictionary of the English Language*, (3d ed. Unabridged, 1961), ‘annoy’ means ‘to irritate with a nettling or exasperating effect.’ ‘Nettling’ means ‘to arouse displeasure, impatience, or anger in: provoke, vex.’ ‘Alarm’ means ‘to arouse to a sense of danger; to put on the alert; to strike with fear; fill with anxiety as to threaten danger or harm.’ ”); see also *People v. McBurney*, 750 P.2d 916, 919 (Colo. 1988) (“In fact, we found the previous section 18-9-111(1)(e) overbroad in *Bolles* not because of the mere presence of the words ‘annoy’ and ‘alarm,’ but because these words were applied to *all* forms of communication, which obviously contained no particularized standards to limit the scope of the offense.”).



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9-1:36

### Harassment (Communication)

The elements of the crime of harassment (communication) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to harass, annoy, or alarm another person,
- [5. directly or indirectly initiated communication with a person or directed language toward another person, anonymously or otherwise,
6. by telephone, telephone network, data network, text message, instant message, computer, computer network, computer system, or other interactive electronic medium,
7. in a manner intended to harass or threaten bodily injury or property damage.]
- [5. made any comment, request, suggestion, or proposal by telephone, computer, computer network, computer system, or other interactive electronic medium,
6. that was obscene.]

[\_. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harassment (communication).

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harassment (communication).**

**COMMENT**

1. See § 18-9-111(1)(e), C.R.S. 2019.

2. See Instruction F:36 (defining “bodily injury”); Instruction F:185 (defining “with intent”); Instruction F:246 (defining “obscene”); Instruction F:303 (defining “public place”).

3. The terms “annoy” and “alarm” are not defined by statute. See *Bolles v. People*, 541 P.2d 80, 82–83 (Colo. 1975) (“According to *Webster’s New International Dictionary of the English Language*, (3d ed. Unabridged, 1961), ‘annoy’ means ‘to irritate with a nettling or exasperating effect.’ ‘Nettling’ means ‘to arouse displeasure, impatience, or anger in; provoke, vex.’ ‘Alarm’ means ‘to arouse to a sense of danger; to put on the alert; to strike with fear; fill with anxiety as to threaten danger or harm.’ ”); see also *People v. McBurney*, 750 P.2d 916, 919 (Colo. 1988) (“In fact, we found the previous section 18-9-111(1)(e) overbroad in *Bolles* not because of the mere presence of the words ‘annoy’ and ‘alarm,’ but because these words were applied to *all* forms of communication, which obviously contained no particularized standards to limit the scope of the offense.”).

4. In 2015, the Committee modified the fifth and sixth elements to reflect legislative amendments. See Ch. 120, sec. 1, § 18-9-111(1)(e), 2015 Colo. Sess. Laws 364, 364.

**9-1:37.SP**

**Harassment—Special Instruction (Location of Communication)**

**Any act of harassment involving [insert a description of the relevant language from section 18-9-111(1)(e)] may be deemed to have occurred or to have been committed either at the place at which the telephone call, electronic mail, or other electronic communication was made, or at the place where it was received.**

**COMMENT**

1. See § 18-9-111(3), C.R.S. 2019.

9-1:38

**Harassment (Telephone)**

**The elements of the crime of harassment (telephone) are:**

- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. with intent,**
  - 4. to harass, annoy, or alarm another person,**
  - 5. made a telephone call or caused a telephone to ring repeatedly,**
  - 6. whether or not a conversation ensued,**
  - 7. with no purpose of legitimate conversation.**
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harassment (telephone).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harassment (telephone).**

**COMMENT**

- 1. See § 18-9-111(1)(f), C.R.S. 2019.**



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2. See Instruction F:36 (defining “bodily injury”); Instruction F:185 (defining “with intent”); Instruction F:246 (defining “obscene”); Instruction F:303 (defining “public place”).

3. See *People ex rel. VanMeveren v. County Court In and For Larimer County*, 551 P.2d 716, 720 (Colo. 1976) (“‘Repeatedly’ is a word of such common understanding that its meaning is not vague. It simply means in the context of this statute that the defendant use insulting, taunting or challenging language more than one time.”).

4. The terms “annoy” and “alarm” are not defined by statute. See *Bolles v. People*, 541 P.2d 80, 82–83 (Colo. 1975) (“According to *Webster’s New International Dictionary of the English Language*, (3d ed. Unabridged, 1961), ‘annoy’ means ‘to irritate with a nettling or exasperating effect.’ ‘Nettling’ means ‘to arouse displeasure, impatience, or anger in: provoke, vex.’ ‘Alarm’ means ‘to arouse to a sense of danger; to put on the alert; to strike with fear; fill with anxiety as to threaten danger or harm.’”); see also *People v. McBurney*, 750 P.2d 916, 919 (Colo. 1988) (“In fact, we found the previous section 18-9-111(1)(e) overbroad in *Bolles* not because of the mere presence of the words ‘annoy’ and ‘alarm,’ but because these words were applied to *all* forms of communication, which obviously contained no particularized standards to limit the scope of the offense.”).

### 9-1:39

#### Harassment (Repeated Communication)

The elements of the crime of harassment (repeated communication) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to harass, annoy, or alarm another person,
5. made repeated communications,
6. at inconvenient hours,
7. that invaded the privacy of another and interfered in the use and enjoyment of another’s home, private residence, or private property.

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[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harassment (repeated communication).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harassment (repeated communication).

### COMMENT

1. See § 18-9-111(1)(g), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”).

3. See *People ex rel. VanMeveren v. County Court In and For Larimer County*, 551 P.2d 716, 720 (Colo. 1976) (“‘Repeatedly’ is a word of such common understanding that its meaning is not vague. It simply means in the context of this statute that the defendant use insulting, taunting or challenging language more than one time.”).

4. The terms “annoy” and “alarm” are not defined by statute. See *Bolles v. People*, 541 P.2d 80, 82–83 (Colo. 1975) (“According to *Webster’s New International Dictionary of the English Language*, (3d ed. Unabridged, 1961), ‘annoy’ means ‘to irritate with a nettling or exasperating effect.’ ‘Nettling’ means ‘to arouse displeasure, impatience, or anger in: provoke, vex.’ ‘Alarm’ means ‘to arouse to a sense of danger; to put on the alert; to strike with fear; fill with anxiety as to threaten danger or harm.’ ”); see also *People v. McBurney*, 750 P.2d 916, 919 (Colo. 1988) (“In fact, we found the previous section 18-9-111(1)(e) overbroad in *Bolles* not because of the mere presence of the words ‘annoy’ and ‘alarm,’ but because these words were applied to *all* forms of communication, which obviously contained no particularized standards to limit the scope of the offense.”).

## 9-1:40

### Harassment (Provocation)

The elements of the crime of harassment (provocation) are:



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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. with intent,
  4. to harass, annoy, or alarm another person,
  5. repeatedly insulted, taunted, challenged, or made communications in offensively coarse language to another,
  6. in a manner likely to provoke a violent or disorderly response.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harassment (provocation).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harassment (provocation).

### COMMENT

1. See § 18-9-111(1)(h), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”).

3. See *People ex rel. VanMeveren v. County Court In and For Larimer County*, 551 P.2d 716, 720 (Colo. 1976) (“‘Repeatedly’ is a word of such common understanding that its meaning is not vague. It simply means in the context of this statute that the defendant use insulting, taunting or challenging language more than one time.”).

4. The terms “annoy” and “alarm” are not defined by statute. See *Bolles v. People*, 541 P.2d 80, 82–83 (Colo. 1975) (“According to *Webster’s*



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*New International Dictionary of the English Language*, (3d ed. Unabridged, 1961), ‘annoy’ means ‘to irritate with a nettling or exasperating effect.’ ‘Nettling’ means ‘to arouse displeasure, impatience, or anger in: provoke, vex.’ ‘Alarm’ means ‘to arouse to a sense of danger; to put on the alert; to strike with fear; fill with anxiety as to threaten danger or harm.’”); *see also* *People v. McBurney*, 750 P.2d 916, 919 (Colo. 1988) (“In fact, we found the previous section 18-9-111(1)(e) overbroad in *Bolles* not because of the mere presence of the words ‘annoy’ and ‘alarm,’ but because these words were applied to *all* forms of communication, which obviously contained no particularized standards to limit the scope of the offense.”).

### 9-1:41.INT

#### Harassment—Interrogatory

If you find the defendant not guilty of harassment, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of harassment, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the defendant commit the harassment with prohibited bias? (Answer “Yes” or “No”)

The defendant committed the harassment with prohibited bias only if:

1. he [she] committed the harassment with the intent to intimidate or harass another person because of that person’s actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

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After considering all the evidence, if you decide the prosecution has failed to meet this this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-9-111(2), C.R.S. 2019.

2. See Instruction F:342 (defining “sexual orientation”); see, e.g., Instruction E:28 (special verdict form).

3. For harassment on the basis of physical or mental disability, the statute refers to section 18-9-121(5), C.R.S. (bias-motivated crimes). That statute in turn incorporates the definition of “person with a disability” from section 18-6.5-102(11), C.R.S. See Instruction F:273 (defining “person with a disability” pursuant to section 18-6.5-102(11)).

4. In 2017, pursuant to a legislative amendment, the Committee added (1) the terms “physical or mental disability” and “sexual orientation” to the interrogatory, (2) the cross-reference to Instruction F:342 in Comment 2, and (3) Comment 3. See Ch. 185, sec. 1, § 18-9-111(2), 2017 Colo. Sess. Laws 677, 677.

### 9-1:42

#### Loitering

**The elements of the crime of loitering are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to interfere with or disrupt the school program or interfere with or endanger school children,
5. loitered in a school building, on school grounds, or within one hundred feet of school grounds,

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6. when persons under the age of eighteen were present in the building or on the grounds,

7. without having any reason or relationship involving custody of, or responsibility for, a pupil, or any other specific, legitimate reason for being there, and

8. after being asked to leave by a school administrator or his [her] representative, or by a peace officer.

[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of loitering.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of loitering.

### COMMENT

1. See § 18-9-112(2), C.R.S. 2019.
2. See Instruction F:185 (defining "with intent"); Instruction F:201 (defining "loiter").
3. See Instruction H:56 (affirmative defense of "lawful assembly").

### 9-1:43

## Desecration of Venerated Objects

The elements of the crime of desecration of venerated objects are:

1. That the defendant,



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**2. in the State of Colorado, at or about the date and place charged,**

**3. knowingly,**

**4. desecrated any public monument or public structure, or desecrated in a public place any other object of veneration by the public.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of desecration of venerated objects.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of desecration of venerated objects.**

**COMMENT**

1. See § 18-9-113(1)(a), C.R.S. 2019.

2. See Instruction F:93 (defining “desecrate”); Instruction F:195 (defining “knowingly”).

**9-1:44**

**Desecration of a Place of Worship or Burial of Human Remains**

**The elements of the crime of desecration of a place of worship or burial of human remains are:**

**1. That the defendant,**

**2. in the State of Colorado, at or about the date and place charged,**

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3. knowingly,

4. desecrated any place of worship or burial of human remains.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of desecration of a place or worship or burial of human remains.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of desecration of a place or worship or burial of human remains.

### COMMENT

1. See § 18-9-113(1)(b), C.R.S. 2019.

2. See Instruction F:93 (defining “desecrate”); Instruction F:195 (defining “knowingly”).

3. Section 18-9-113(1)(b) specifies that the disturbance of an unmarked human burial is subject to prosecution under section 24-80-1305, C.R.S. 2019. The Committee has not drafted a model instruction for that offense.

9-1:45

### Hindering Transportation

The elements of the crime of hindering transportation are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. knowingly and without lawful authority,
4. forcibly stopped and hindered the operation of any vehicle used in providing transportation services of any kind to the public, or to any person, association, or corporation.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of hindering transportation.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of hindering transportation.

COMMENT

1. See § 18-9-114, C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).

9-1:46

**Endangering Public Transportation (Tamper)**

The elements of the crime of endangering public transportation (tamper) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. tampered with a facility of public transportation,



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5. to cause any damage, malfunction, nonfunction, theft, or unauthorized removal of material,

6. which would result in the creation of a substantial risk of death or serious bodily injury to anyone.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of endangering public transportation (tamper).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of endangering public transportation (tamper).

### COMMENT

1. See § 18-9-115(1)(a), C.R.S. 2019.

2. See Instruction F:137 (defining “facility of public transportation”); Instruction F:185 (defining “with intent”); Instruction F:299 (defining “public conveyance”); Instruction F:332 (defining “serious bodily injury”).

3. If the defendant is not charged with theft, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. See Instructions 4-4:01 to 4-4:05. Place the elemental instruction for theft immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for theft.

9-1:47

### Endangering Public Transportation (Crime)

The elements of the crime of endangering public transportation (crime) are:

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- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with the intent of committing the crime of [insert name(s) of offense(s)] on a public conveyance,**
- 4. stopped or boarded a public conveyance.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of endangering public transportation (crime).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of endangering public transportation (crime).**

**COMMENT**

- 1. See § 18-9-115(1)(b), C.R.S. 2019.**
- 2. See Instruction F:185 (defining “with intent”); Instruction F:299 (defining “public conveyance”).**

**9-1:48**

**Endangering Public Transportation (Threat)**

**The elements of the crime of endangering public transportation (threat) are:**

- 1. That the defendant,**

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2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. on a public conveyance,
5. threatened any operator, crew member, attendant, or passenger,
6. with death or imminent serious bodily injury; or with a deadly weapon or with words or actions intended to induce belief that he [she] was armed with a deadly weapon.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of endangering public transportation (threat).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of endangering public transportation (threat).

### COMMENT

1. See § 18-9-115(1)(c), C.R.S. 2019.

2. See Instruction F:36 (defining “bodily injury”); Instruction F:88 (defining “deadly weapon”); Instruction F:195 (defining “knowingly”); Instruction F:299 (defining “public conveyance”); Instruction F:332 (defining “serious bodily injury”).



9-1:49

**Endangering Public Transportation (Bodily Injury)**

**The elements of the crime of endangering public transportation (bodily injury) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. on a public conveyance,**
- [4. knowingly or recklessly,**
- 5. caused bodily injury to another person.]**
- [4. with criminal negligence,**
- 5. caused bodily injury to another person by means of a deadly weapon.]**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of endangering public transportation (bodily injury).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of endangering public transportation (bodily injury).**

**COMMENT**

1. See § 18-9-115(1)(d)(I), (II), C.R.S. 2019.
2. See Instruction F:36 (defining “bodily injury”); Instruction F:79

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(defining “criminal negligence”); Instruction F:88 (defining “deadly weapon”); Instruction F:195 (defining “knowingly”); Instruction F:299 (defining “public conveyance”); Instruction F:308 (defining “recklessly”); Instruction F:332 (defining “serious bodily injury”).

**9-1:50**

### Endangering Utility Transmission

**The elements of the crime of endangering utility transmission are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. tampered with a facility of utility transmission,**
- 5. to cause any damage, malfunction, nonfunction, theft, or unauthorized removal of material,**
- 6. which would interrupt performance of utility transmission or result in a creation of a substantial risk of death or serious bodily injury to anyone.**

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of endangering utility transmission.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of endangering utility transmission.**

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### COMMENT

1. See § 18-9-115(1.5), C.R.S. 2019.

2. See Instruction F:138 (defining “facility of utility transmission”); Instruction F:185 (defining “with intent”); Instruction F:332 (defining “serious bodily injury”); Instruction F:384 (defining “utility”).

3. If the defendant is not charged with theft, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. See Instructions 4-4:01 to 4-4:05. Place the elemental instruction for theft immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for theft.

### 9-1:51

#### **Violation of a Restraining Order Related to Public Conveyances**

**The elements of the crime of violation of a restraining order related to public conveyances are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. violated a court order specifically restraining him [her] from traveling in or on a particular public conveyance.
- [4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of violation of a restraining order related to public conveyances.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**



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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of violation of a restraining order related to public conveyances.**

### COMMENT

1. See § 18-9-115.5, C.R.S. 2019.

2. See Instruction F:299 (defining “public conveyance”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Section 18-9-115.5, C.R.S. 2019, specifies that the statute applies only to restraining orders issued pursuant to C.R.C.P. 65.

### 9-1:52

#### Projecting Missiles At a Vehicle

**The elements of the crime of projecting a missile at a vehicle are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. projected any missile,
5. at or against any vehicle or equipment designed for the transportation of persons or property,
6. other than a bicycle.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of projecting a missile at a vehicle.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of projecting a missile at a vehicle.

**COMMENT**

1. See § 18-9-116(1), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:230 (defining “missile”).

3. If the defendant is charged with projecting missiles at both a vehicle and a bicyclist, use a separate instruction for each count (with corresponding separate verdict forms). This is necessary because the offenses have different penalty classifications.

**9-1:53**

**Projecting Missiles At a Bicyclist**

The elements of the crime of projecting a missile at a bicyclist are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. projected any missile,
5. at or against any bicyclist.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide

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the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of projecting a missile at a bicyclist.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of projecting a missile at a bicyclist.

### COMMENT

1. See § 18-9-116(2), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:230 (defining “missile”).

3. If the defendant is charged with projecting missiles at both a vehicle and a bicyclist, use a separate instruction for each count (with corresponding separate verdict forms). This is necessary because the offenses have different penalty classifications.

### 9-1:54

#### Vehicular Eluding

The elements of the crime of vehicular eluding are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. while operating a motor vehicle,
5. eluded or attempted to elude,
6. a peace officer who was also operating a motor vehicle, and



**7. the defendant knew, or reasonably should have known, that he [she] was being pursued by the peace officer, and**

**8. operated his [her] vehicle in a reckless manner.**

**[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of vehicular eluding.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of vehicular eluding.**

#### COMMENT

1. *See* § 18-9-116.5(1), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:236 (defining “motor vehicle”); Instruction F:308 (defining “recklessly”).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

4. + *See* *People v. Dominguez*, 2019 COA 78, ¶ 64, 454 P.3d 364, 374 (holding that reckless driving is a lesser included offense of vehicular eluding).

5. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 3.

6. + In 2019, the Committee added Comment 4.

9-1:55.INT

**Vehicular Eluding—Interrogatory (Bodily Injury or Death)**

If you find the defendant not guilty of vehicular eluding, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of vehicular eluding, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the eluding result in [bodily injury] [death]?  
(Answer “Yes” or “No”)

The eluding resulted in [bodily injury] [death] only if:

1. the vehicular eluding resulted in [bodily injury] [death] to another person.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

**COMMENT**

1. See § 18-9-116.5(2)(a), C.R.S. 2019.
2. See Instruction F:36 (defining “bodily injury”); see, e.g., Instruction E:28 (special verdict form).
3. If the defendant is charged with causing the death of one person



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and causing injury to another, use separate copies of this interrogatory (with separate places to answer on the verdict form). Similarly, use separate copies of this interrogatory in cases where there is a dispute concerning whether the eluding caused death, or merely bodily injury.

**9-1:56**

### **Unlawful Conduct On Public Property**

**The elements of the crime of unlawful conduct on public property are:**

- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. entered or remained in any public building or on any public property, or conducted himself [herself] in or on any public building or on any public property,**
  - 4. in violation of any order, rule, or regulation concerning [insert a description of subject matter from section 18-9-117(1)(a)–(g), or “any authority granted by any other law”], limiting or prohibiting the use or activities or conduct in such public building or on such public property,**
  - 5. that was issued by an officer or agency having the power of control, management, or supervision of the building or property, and**
  - 6. notice of the limitation or prohibition was prominently posted at all public entrances to the building or property, or defendant was actually first given notice of the limitation or prohibition by the person by the officer or agency, including any agent thereof, or by any law enforcement officer who had jurisdiction or authority for enforcement.**
- [7. and that the defendant’s conduct was not**



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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful conduct on public property.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful conduct on public property.**

### COMMENT

1. *See* § 18-9-117(1), (2), C.R.S. 2019.

2. *See* Instruction F:298 (defining “public building”).

3. Section 18-9-117(1) contains a non-exhaustive list of the relevant types of orders, rules, and regulations. In a case in which there is a dispute concerning whether an officer or agency had authority to promulgate a particular order, rule, or regulation, the court should resolve the issue as a matter of law. Accordingly, the current version of the model instruction does not include the “under authority granted by law” language that previously appeared as an element in COLJI-Crim. 30:29 (1983).

### 9-1:57.INT

#### **Unlawful Conduct On Public Property—Interrogatory**

**If you find the defendant not guilty of unlawful conduct on public property, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of unlawful conduct on public property, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the defendant violate an order, rule, or**

**regulation concerning a funeral or funeral procession? (Answer “Yes” or “No”)**

**The defendant violated an order, rule, or regulation concerning a funeral or funeral procession only if:**

**1. the defendant violated an order, rule, or regulation prohibiting activities or conduct within public buildings or on public property which might interfere with, impair, or disrupt a funeral or funeral procession.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

1. See § 18-9-117(1)(c), (3)(c), C.R.S. 2019.

2. See Instruction F:159 (defining “funeral”); see, e.g., Instruction E:28 (special verdict form).

**9-1:58**

**Firearms, Explosives, or Incendiary Devices in Facilities  
of Public Transportation**

**The elements of the crime of [firearm] [explosive or incendiary device] in a facility of public transportation are:**

**1. That the defendant,**



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2. in the State of Colorado, at or about the date and place charged,

3. without legal authority,

4. had any loaded firearm or explosive or incendiary device in his [her] possession in any facility of public transportation, or carried or brought any loaded firearm or explosive or incendiary device into, or caused any loaded firearm or explosive or incendiary device to be carried or brought into, any facility of public transportation.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of [firearm] [explosive or incendiary device] in a facility of public transportation.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of [firearm] [explosive or incendiary device] in a facility of public transportation.

### COMMENT

1. See § 18-9-118, C.R.S. 2019.

2. See Instruction F:134 (defining “explosive or incendiary device”); Instruction F:137 (defining “facility of public transportation”); Instruction F:154 (defining “firearm”); Instruction F:281 (defining “possession”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).



9-1:59

**Failure or Refusal to Leave Premises or Property Upon  
Request of a Peace Officer (Noncompliance)**

The elements of the crime of failure or refusal to leave premises or property upon request of a peace officer (noncompliance) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. barricaded or refused police entry to any premises or property through use of, or threatened use of, force, and
5. refused or failed to leave any premises or property upon being requested to do so by a peace officer,
6. who had probable cause to believe a crime was occurring and that the defendant constituted a danger to himself [herself] or others.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure or refusal to leave premises or property upon request of a peace officer (noncompliance).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you

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**should find the defendant not guilty of failure or refusal to leave premises or property upon request of a peace officer (noncompliance).**

### COMMENT

1. *See* § 18-9-119(2), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:263 (defining “peace officer”).

3. Because the statute requires a two-part determination of probable cause, in most cases it will be necessary to draft a supplemental instruction explaining that the prosecution must prove that the facts known to the officer were sufficient to induce a person of ordinary prudence and caution reasonably to believe that: (1) a crime was occurring; and (2) the defendant constituted a danger to himself [herself] or others. *See generally* Wigger v. McKee, 809 P.2d 999, 1005 (Colo. App. 1990) (“In a § 1983 damage suit, the existence of probable cause, when dependent on the resolution of factual questions, is for the determination of the jury. However, if no genuine issue as to any material fact exists and if credibility conflicts are absent, the determination may be made on summary judgment as a matter of law.” (citation omitted)).

### 9-1:60

#### **Failure or Refusal to Leave Premises or Property Upon Request of a Peace Officer (Another Person; No Deadly Weapon)**

**The elements of the crime of failure or refusal to leave premises or property upon request of a peace officer (another person; no deadly weapon) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. barricaded or refused police entry to any premises or property through use of, or threatened use of, force, and
5. refused or failed to leave any premises or

property upon being requested to do so by a peace officer,

6. who had probable cause to believe a crime was occurring and that defendant constituted a danger to himself [herself] or others, and

7. in the same criminal episode,

8. knowingly,

9. held another person hostage or confined or detained another person without his [her] consent,

10. without proper legal authority, and

11. without the use of a deadly weapon.

[12. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure or refusal to leave premises or property upon request of a peace officer (another person; no deadly weapon).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure or refusal to leave premises or property upon request of a peace officer (another person; no deadly weapon).

#### COMMENT

1. See § 18-9-119(3), C.R.S. 2019.

2. See Instruction F:172 (defining “hold hostage”); Instruction F:195 (defining “knowingly”); Instruction F:263 (defining “peace officer”).



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3. Because the statute requires a two-part determination of probable cause, in most cases it will be necessary to draft a supplemental instruction explaining that the prosecution must prove that the facts known to the officer were sufficient to induce a person of ordinary prudence and caution reasonably to believe that: (1) a crime was occurring; and (2) defendant constituted a danger to himself [herself] or others. *See generally* Wigger v. McKee, 809 P.2d 999, 1005 (Colo. App. 1990) ("In a § 1983 damage suit, the existence of probable cause, when dependent on the resolution of factual questions, is for the determination of the jury. However, if no genuine issue as to any material fact exists and if credibility conflicts are absent, the determination may be made on summary judgment as a matter of law.").

### 9-1:61

#### **Failure or Refusal to Leave Premises or Property Upon Request of a Peace Officer (Belief As to Deadly Weapon)**

The elements of the crime of failure or refusal to leave premises or property upon request of a peace officer (belief as to deadly weapon) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. barricaded or refused police entry to any premises or property through use of, or threatened use of, force, and
5. refused or failed to leave any premises or property upon being requested to do so by a peace officer,
6. who had probable cause to believe a crime was occurring and that defendant constituted a danger to himself [herself] or others, and
7. in the same criminal episode,
8. recklessly or knowingly,

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**9. caused a peace officer to believe that he [she] possessed a deadly weapon.**

**[10. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure or refusal to leave premises or property upon request of a peace officer (belief as to deadly weapon).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure or refusal to leave premises or property upon request of a peace officer (belief as to deadly weapon).**

COMMENT

1. See § 18-9-119(4), C.R.S. 2019.

2. See Instruction F:88 (defining “deadly weapon”); Instruction F:195 (defining “knowingly”); Instruction F:263 (defining “peace officer”); Instruction F:281 (defining “possession”); Instruction F:308 (defining “recklessly”).

3. Although section 18-9-119(4) contains a single element that is to be added to the elements in either section 18-9-119(2) or section 18-9-119(3), section 18-9-119(3), in turn, incorporates and builds on section 18-9-119(2). Therefore, because it would be illogical for a prosecutor charging a violation of section 18-9-119(4) to needlessly assume the burden of proving the three additional elements which section 18-9-119(3) engrafts to section 18-9-119(2), the above model instruction does not include the three additional elements from section 18-9-119(3).

4. Because the statute requires a two-part determination of probable cause, in most cases it will be necessary to draft a supplemental instruction explaining that the prosecution must prove that the facts known to the officer were sufficient to induce a person of ordinary prudence and caution reasonably to believe that: (1) a crime was occurring; and (2) defendant constituted a danger to himself [herself] or

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others. *See generally* Wigger v. McKee, 809 P.2d 999, 1005 (Colo. App. 1990) ("In a § 1983 damage suit, the existence of probable cause, when dependent on the resolution of factual questions, is for the determination of the jury. However, if no genuine issue as to any material fact exists and if credibility conflicts are absent, the determination may be made on summary judgment as a matter of law.").

9-1:62

### **Failure or Refusal to Leave Premises or Property Upon Request of a Peace Officer (Another Person; Deadly Weapon)**

The elements of the crime of failure or refusal to leave premises or property upon request of a peace officer (another person; deadly weapon) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. barricaded or refused police entry to any premises or property through use of, or threatened use of, force, and
5. refused or failed to leave any premises or property upon being requested to do so by a peace officer,
6. who had probable cause to believe a crime was occurring and that defendant constituted a danger to himself [herself] or others, and
7. in the same criminal episode,
8. knowingly,
9. held another person hostage or confined or detained another person,



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**10. through the possession, use, or threatened use of a deadly weapon,**

**11. without the other person's consent, and**

**12. without proper legal authority.**

**[13. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure or refusal to leave premises or property upon request of a peace officer (another person; deadly weapon).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure or refusal to leave premises or property upon request of a peace officer (another person; deadly weapon).**

**COMMENT**

1. See § 18-9-119(5), C.R.S. 2019.

2. See Instruction F:88 (defining “deadly weapon”); Instruction F:172 (defining “hold hostage”); Instruction F:195 (defining “knowingly”); Instruction F:263 (defining “peace officer”); Instruction F:281 (defining “possession”); Instruction F:308 (defining “recklessly”).

3. Because the statute requires a two-part determination of probable cause, in most cases it will be necessary to draft a supplemental instruction explaining that the prosecution must prove that the facts known to the officer were sufficient to induce a person of ordinary prudence and caution reasonably to believe that: (1) a crime was occurring; and (2) defendant constituted a danger to himself [herself] or others. See generally *Wigger v. McKee*, 809 P.2d 999, 1005 (Colo. App. 1990) (“In a § 1983 damage suit, the existence of probable cause, when dependent on the resolution of factual questions, is for the determination of the jury. However, if no genuine issue as to any material fact exists and if credibility conflicts are absent, the determination may be made on summary judgment as a matter of law.”).

9-1:63

**Failure or Refusal to Leave Premises or Property Upon  
Request of a Peace Officer (Another Person; Belief As to  
Deadly Weapon)**

The elements of the crime of failure or refusal to leave premises or property upon request of a peace officer (another person; belief as to deadly weapon) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. barricaded or refused police entry to any premises or property through use, or threatened use, of force, and
5. refused or failed to leave any premises or property upon being requested to do so by a peace officer,
6. who had probable cause to believe a crime was occurring and that defendant constituted a danger to himself [herself] or others, and
7. in the same criminal episode,
8. knowingly,
9. held another person hostage or confined or detained another person,
10. by knowingly causing the other person to reasonably believe that he [she] possessed a deadly weapon.



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[11. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure or refusal to leave premises or property upon request of a peace officer (another person; belief as to deadly weapon).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure or refusal to leave premises or property upon request of a peace officer (another person; belief as to deadly weapon).

### COMMENT

1. See § 18-9-119(7), C.R.S. 2019.

2. See Instruction F:88 (defining “deadly weapon”); Instruction F:172 (defining “hold hostage”); Instruction F:195 (defining “knowingly”); Instruction F:263 (defining “peace officer”); Instruction F:281 (defining “possession”); Instruction F:308 (defining “recklessly”).

3. Because the statute requires a two-part determination of probable cause, in most cases it will be necessary to draft a supplemental instruction explaining that the prosecution must prove that the facts known to the officer were sufficient to induce a person of ordinary prudence and caution reasonably to believe that: (1) a crime was occurring; and (2) defendant constituted a danger to himself [herself] or others. See *generally* Wigger v. McKee, 809 P.2d 999, 1005 (Colo. App. 1990) (“In a § 1983 damage suit, the existence of probable cause, when dependent on the resolution of factual questions, is for the determination of the jury. However, if no genuine issue as to any material fact exists and if credibility conflicts are absent, the determination may be made on summary judgment as a matter of law.”).

9-1:64

### Terrorist Training Activities

The elements of the crime of terrorist training activities are:



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1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. taught or demonstrated to any person the use, application, or making of any firearm, explosive, or incendiary device, or technique capable of causing injury or death to any person, knowing that it would be unlawfully used in furtherance of a civil disorder; or assembled with one or more other persons for the purpose of training or practicing with, or being instructed in the use of, any firearm, explosive or incendiary device, or technique capable of causing injury or death to any person, with the intent to unlawfully use the same in furtherance of a civil disorder.
- [4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of terrorist training activities.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of terrorist training activities.

### COMMENT

1. See § 18-9-120(2), C.R.S. 2019.
2. See Instruction F:54 (defining “civil disorder”); Instruction F:133 (defining “explosive or incendiary device”); Instruction F:155 (defining “firearm”).
3. Section 18-9-120(3), C.R.S. 2019, establishes exemptions from criminal liability for a variety of legitimate weapons training activities, and also for acts that law enforcement officers commit as part of their

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duties. However, the Committee has not drafted model affirmative defense instructions.

**9-1:65**

### **Bias-Motivated Crimes (Bodily Injury)**

**The elements of bias-motivated crime (bodily injury) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with the intent,**
- 4. to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation,**
- 5. knowingly,**
- 6. caused bodily injury to another person.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bias-motivated crime (bodily injury).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bias-motivated crime (bodily injury).**

### **COMMENT**

- 1. See § 18-9-121(2)(a), C.R.S. 2019.**



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2. See Instruction F:36 (defining “bodily injury”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:273 (defining “person with a disability”); Instruction F:342 (defining “sexual orientation”); *see also* § 18-9-121(5)(a), C.R.S. 2019 (“‘Physical or mental disability’ refers to a disability as used in the definition of the term ‘person with a disability’ in section 18-6.5-102(11).”).

### 9-1:66.INT

#### **Bias-Motivated Crimes—Interrogatory (Bodily Injury; Aided or Abetted by Another)**

If you find the defendant not guilty of bias-motivated crime (bodily injury), you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of bias-motivated crime (bodily injury), you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Was the defendant aided or abetted? (Answer  
“Yes” or “No”)**

**The defendant was aided or abetted only if:**

1. he [she] was physically aided or abetted by one or more other persons,
2. during the commission of the bias-motivated crime.

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide



the prosecution has failed to meet this this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

COMMENT

1. See § 18-9-121(2)(a), (3), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

9-1:67

**Bias-Motivated Crimes (Fear)**

The elements of bias-motivated crime (fear) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with the intent,
4. to intimidate or harass another person because of that person’s actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation,
5. knowingly,
6. by words or conduct,
7. placed another person in fear of imminent lawless action directed at that person, or that person’s property,
8. and such words or conduct were likely to produce bodily injury to that person or damage to that person’s property.
- [9. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

## OFFENSES AGAINST PUBLIC PEACE AND ORDER

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bias-motivated crime (fear).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bias-motivated crime (fear).

### COMMENT

1. *See* § 18-9-121(2)(b), C.R.S. 2019.

2. *See* Instruction F:36 (defining “bodily injury”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:273 (defining “person with a disability”); Instruction F:342 (defining “sexual orientation”); *see also* § 18-9-121(5)(a), C.R.S. 2019 (“ ‘Physical or mental disability’ refers to a disability as used in the definition of the term ‘person with a disability’ in section 18-6.5-102(11).”).

### 9-1:68

#### Bias-Motivated Crimes (Property)

The elements of bias-motivated crime (property) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with the intent,
4. to intimidate or harass another person because of that person’s actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation,
5. knowingly,
6. caused damage to or destruction of the property of another person.

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**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bias-motivated crime (property).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bias-motivated crime (property).**

**COMMENT**

1. *See* § 18-9-121(2)(c), C.R.S. 2019.

2. *See* Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:273 (defining “person with a disability”); Instruction F:342 (defining “sexual orientation”); *see also* § 18-9-121(5)(a), C.R.S. 2019 (“‘Physical or mental disability’ refers to a disability as used in the definition of the term ‘person with a disability’ in section 18-6.5-102(11).”).

**9-1:69**

**Preventing Passage to or From a Health Care Facility**

**The elements of the crime of preventing passage [to] [from] a health care facility are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. obstructed, detained, hindered, impeded, or blocked another person's entry to, or exit from, a health care facility.**

**[5. and that the defendant's conduct was not**



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legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of preventing passage [to] [from] a health care facility.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of preventing passage [to] [from] a health care facility.

### COMMENT

1. See § 18-9-122(2), C.R.S. 2019.

2. See Instruction F:169 (defining “health care facility”); Instruction F:195 (defining “knowingly”).

### 9-1:70

## Engaging in Prohibited Activities Near a Health Care Facility

The elements of the crime of prohibited activities near a health care facility are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. approached to within eight feet of another person,
5. without that person’s consent,
6. for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral

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**protest, education, or counseling with that person,**

**7. in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility.**

**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited activities near a health care facility.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited activities near a health care facility.**

**COMMENT**

1. *See* § 18-9-122(3), C.R.S. 2019.

2. *See* Instruction F:169 (defining “health care facility”); Instruction F:195 (defining “knowingly”).

**9-1:71**

**Bringing an Alcohol Beverage, Bottle, or Can Into the  
Major League Baseball Stadium**

**The elements of the crime of bringing an alcohol beverage, bottle, or can into the major league baseball stadium are:**

**1. That the defendant,**

**2. in the State of Colorado, at or about the date and place charged,**

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3. carried or brought,
4. into the Denver metropolitan major league baseball stadium district stadium,
5. any alcohol beverage, bottle, or can.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of bringing a[n] [alcohol beverage] [bottle] [can] into the major league baseball stadium.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of bringing a[n] [alcohol beverage] [bottle] [can] into the major league baseball stadium.

### COMMENT

1. *See* § 18-9-123(1), C.R.S. 2019.

2. *See* Instruction F:15 (defining “alcohol beverage”); Instruction F:39 (defining “bottle”); Instruction F:43 (defining “can”); Instruction F:195 (defining “knowingly”); Instruction F:351 (defining “stadium”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute includes exemptions from criminal liability. *See* § 18-9-123(2), C.R.S. 2019 (“Nothing in this section shall be construed to prohibit a person from bringing or carrying into the stadium a beverage, bottle, or can required in connection with the person’s practice of religion, the person’s medical or physical condition, or food or formula for the person’s infant.”). However, the Committee has not drafted a model affirmative defense instruction.



9-1:72

**Hazing**

**The elements of the crime of hazing are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. engaged in hazing.
- [4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of hazing.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of hazing.

**COMMENT**

1. See § 18-9-124(2)(a), C.R.S. 2019.
2. See Instruction F:36 (defining "bodily injury"); Instruction F:168 (defining "hazing"); Instruction F:308 (defining "recklessly").

9-1:73

**Interference With a Funeral (Private Property)**

**The elements of the crime of interference with a funeral (private property) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

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3. knowing a funeral was being conducted,
  4. refused to leave any private property within one hundred feet of the funeral site,
  5. upon the request of the owner of the private property, or the owner's agent.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference with a funeral (private property).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference with a funeral (private property).

### COMMENT

1. See § 18-9-125(1)(a), C.R.S. 2019.

2. See Instruction F:159 (defining "funeral"); Instruction F:195 (defining "knowingly").

9-1:74

### Interference With a Funeral (Public Property)

The elements of the crime of interference with a funeral (public property) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing a funeral was being conducted,

4. refused to leave any public property within one hundred feet of the funeral site upon the request of a public official with authority over the property or upon the request of a peace officer, and

5. the public official or peace officer making the request had reasonable grounds to believe that defendant had violated a rule or regulation applicable to that property, or a statute or local ordinance.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference with a funeral (public property).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference with a funeral (public property).

#### COMMENT

1. See § 18-9-125(1)(b), C.R.S. 2019.

2. See Instruction F:159 (defining “funeral”); Instruction F:195 (defining “knowingly”).

## CHAPTER 9-2

### CRUELTY TO ANIMALS

#### CHAPTER COMMENTS

1. Section 18-9-201.5, C.R.S. 2019, states that the offenses within Article 9, Part 2, do not apply to a variety of circumstances (e.g., ac-



## **CRUELTY TO ANIMALS**

cepted animal husbandry practices, conduct permitted by wildlife statutes, legally authorized animal care, and facilities licensed under the federal Animal Welfare Act). However, the Committee has not drafted model affirmative defense instructions.

**9-2:01**

### **Cruelty to Animals (Prohibited Acts)**

**The elements of the crime of cruelty to animals (prohibited acts) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly, recklessly, or with criminal negligence,**
- 4. overdrove, overloaded, overworked, tormented, deprived of necessary sustenance, unnecessarily or cruelly beat, allowed to be housed in a manner that resulted in chronic or repeated serious physical harm, carried or confined in or upon any vehicles in a cruel or reckless manner, engaged in a sexual act with an animal, or otherwise mistreated or neglected any animal, or caused or procured it to be done, or, having the charge or custody of any animal, failed to provide it with proper food, drink, or protection from the weather consistent with the species, breed, and type of animal involved, or abandoned an animal.**
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cruelty to animals (prohibited acts).**

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cruelty to animals (prohibited acts).**

### COMMENT

1. See § 18-9-202(1)(a), C.R.S. 2019.
2. See Instruction F:03 (defining “abandon”); Instruction F:17 (defining “animal”); Instruction F:79 (defining “criminal negligence”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:231 (defining “mistreatment”); Instruction F:240 (defining “neglect”); Instruction F:308 (defining “recklessly”); Instruction F:333 (defining “serious physical harm”); Instruction F:336 (defining “sexual act with an animal”).
3. See Instruction H:57 (affirmative defense of “dog found running, worrying, or injuring sheep, cattle, or other livestock”).
4. It appears that knowing or reckless abandonment, as defined by the final clause of section 18-9-202(1)(a), is applicable only to persons who have “charge or custody” of an animal. This is the interpretation that was embodied in COLJI-Crim. 35:12 (1983), and it is maintained in the above model instruction.

### 9-2:02

#### **Cruelty to Animals (Intentional Abandonment of a Dog or Cat)**

**The elements of the crime of cruelty to animals (intentional abandonment of a dog or cat) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. abandoned a dog or cat.

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

## CRUELTY TO ANIMALS

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cruelty to animals (intentional abandonment of a dog or cat).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cruelty to animals (intentional abandonment of a dog or cat).

### COMMENT

1. See § 18-9-202(1)(b), C.R.S. 2019.

2. See Instruction F:03 (defining “abandon”); Instruction F:185 (defining “intentionally”).

3. See Instruction H:57 (affirmative defense of “dog found running, worrying, or injuring sheep, cattle, or other livestock”).

### 9-2:03

#### **Cruelty to Animals (Recklessly or Negligently Torturing, Needlessly Mutilating, or Needlessly Killing)**

The elements of the crime of cruelty to animals (recklessly or negligently torturing, needlessly mutilating, or needlessly killing) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. recklessly, or with criminal negligence,
4. tortured, needlessly mutilated, or needlessly killed an animal.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



## COLORADO JURY INSTRUCTIONS—CRIMINAL

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cruelty to animals (recklessly or negligently torturing, needlessly mutilating, or needlessly killing).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cruelty to animals (recklessly or negligently torturing, needlessly mutilating, or needlessly killing).

### COMMENT

1. See § 18-9-202(1.5)(a), C.R.S. 2019.
2. See Instruction F:17 (defining “animal”); Instruction F:79 (defining “criminal negligence”); Instruction F:308 (defining “recklessly”).
3. See Instruction H:57 (affirmative defense of “dog found running, worrying, or injuring sheep, cattle, or other livestock”).

### 9-2:04

#### Aggravated Cruelty to Animals

The elements of the crime of aggravated cruelty to animals are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. tortured, needlessly mutilated, or needlessly killed an animal.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

## CRUELTY TO ANIMALS

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aggravated cruelty to animals.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aggravated cruelty to animals.

### COMMENT

1. See § 18-9-202(1.5)(b), C.R.S. 2019.
2. See Instruction F:17 (defining “animal”); Instruction F:195 (defining “knowingly”).
3. See Instruction H:57 (affirmative defense of “dog found running, worrying, or injuring sheep, cattle, or other livestock”).

9-2:05

### **Cruelty to a Service Animal or a Certified Police Working Dog or + Police Working Horse**

The elements of the crime of cruelty to a service animal or a certified police working dog + or police working horse are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
- [3. knowingly, recklessly, or with criminal negligence,
4. overdrove, overloaded, overworked, tormented, deprived of necessary sustenance, unnecessarily or cruelly beat, allowed to be housed in a manner that resulted in chronic or repeated serious physical harm, carried or confined in or upon any vehicles in a cruel or reckless manner,

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**engaged in a sexual act with an animal, or otherwise mistreated or neglected any animal, or caused or procured it to be done, or, having the charge or custody of any animal, failed to provide it with proper food, drink, or protection from the weather consistent with the species, breed, and type of animal involved, or abandoned an animal,]**

**[3. intentionally,**

**4. abandoned a dog or cat,]**

**5. and the animal was a service animal, certified police working dog, or + police working horse, whether or not the service animal, certified police working dog, or + police working horse was on duty.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cruelty to a service animal or a certified police working dog + or police working horse.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cruelty to a service animal or a certified police working dog + or police working horse.**

**COMMENT**

1. See § 18-9-202(1.5)(c), C.R.S. 2019.

2. See Instruction F:03 (defining “abandon”); Instruction F:48.2 (defining “certified police working dog”); Instruction F:48.25 (defining + “police working horse”); Instruction F:79 (defining “criminal negligence”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining



## CRUELTY TO ANIMALS

“knowingly”); Instruction F:231 (defining “mistreatment”); Instruction F:240 (defining “neglect”); Instruction F:308 (defining “recklessly”); Instruction F:333 (defining “serious physical harm”); Instruction F:334 (defining “service animal”); Instruction F:336 (defining “sexual act with an animal”).

3. Although it seems highly improbable that a cat would ever qualify as a “service animal” for purposes of section 18-9-201(2.3), C.R.S. 2019, the model instruction nevertheless includes language contemplating that possibility because section 18-9-202(1.5)(c) explicitly incorporates all of section 18-9-202(1), and section 18-9-202(1)(b) specifically includes cats.

4. See Instruction 9-2:01, Comment 4 (discussing knowing or reckless abandonment, as defined by the final clause of section 18-9-202(1)(a)).

5. See Instruction H:57 (affirmative defense of “dog found running, worrying, or injuring sheep, cattle, or other livestock”).

6. In 2016, the Committee modified this instruction pursuant to a legislative amendment. See Ch. 236, sec. 2, § 18-9-202(1.5)(c), 2016 Colo. Sess. Laws 952, 953.

7. In 2018, pursuant to a legislative amendment, the Committee added “certified police working horse” to the instruction’s title, modified the fifth element, and added the cross-reference to Instruction F:48.25 in Comment 2. See Ch. 19, sec. 2, § 18-9-202(1.5)(c), 2018 Colo. Sess. Laws 266, 267.

8. + In 2019, the Committee changed the phrase “certified police working horse” to “police working horse” throughout this instruction pursuant to a legislative amendment. See Ch. 75, sec. 2, § 18-9-202(1.5)(c), 2019 Colo. Sess. Laws 276, 277.

### 9-2:06

#### Animal Fighting

**The elements of the crime of animal fighting are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. caused, sponsored, arranged, held, or encouraged a fight between animals,**

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4. for the purpose of monetary gain or entertainment.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of animal fighting.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of animal fighting.

COMMENT

1. See § 18-9-204(1)(a), C.R.S. 2019.

2. See Instruction F:17 (defining “animal”).

3. The statute includes exemptions from criminal liability for normal hunting practices and animal training. See § 18-9-204(3), (4), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

9-2:07.SP

**Animal Fighting—Special Instruction**

A person encourages a fight between animals for the purpose of monetary gain or entertainment if he [she]: is knowingly present at or wagers on such a fight; or owns, trains, transports, possesses, breeds, sells, transfers, or equips an animal with the intent that such animal will be engaged in such a fight; or knowingly allows any such fight to occur on any property owned or controlled by him [her]; or knowingly allows any animal used for such a fight to be kept, boarded, housed, or trained on, or transported in, any property owned or controlled by him [her]; or

**knowingly uses any means of communication for the purpose of promoting such a fight; or knowingly possesses any animal used for such a fight or any device intended to enhance the animal's fighting ability.**

**COMMENT**

1. See § 18-9-204(1)(b)(I) to (VI), C.R.S. 2019.

2. See Instruction F:17 (defining "animal"); Instruction F:185 (defining "with intent"); Instruction F:195 (defining "knowingly"); Instruction F:281 (defining "possession").

**9-2:08**

**Unlawful Ownership of a Dangerous Dog**

**The elements of the crime of unlawful ownership of a dangerous dog are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. owned, possessed, harbored, kept, had a financial or property interest in, or had custody or control over,**
- 4. a dangerous dog.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful ownership of a dangerous dog.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful ownership of a dangerous dog.**



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### COMMENT

1. *See* § 18-9-204.5(3)(a), C.R.S. 2019.

2. *See* Instruction F:84 (defining “dangerous dog”); Instruction F:256 (defining “owner” or “owns”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The above instruction reflects an understanding of the offense as being fully defined by section 18-9-204.5(3)(a), with sentence enhancement provisions defined by section 18-9-204.5(3)(b), (c), (d), (e)(I), (e)(III)(B.5), C.R.S. 2019. Under this construction, if the dangerous dog does not cause any injury and does not damage any property, the base level offense is unclassified, and the only penalties are those that are set forth in section 18-9-204.5(e.5)(I) to (VI), C.R.S. 2019. *See* § 18-1.3-504(1), C.R.S. 2019 (“Any . . . petty offense defined by state statute without specification of its class shall be punishable as provided in the statute defining it”). *See also* § 18-9-204.5(e)(III)(B.5), C.R.S. 2019 (establishing the least severe sentence enhancement provision, which makes the offense a class one petty offense if the dog has damaged or destroyed the property of another).

4. *See* Instruction H:58 (affirmative defense of “conduct of the person or animal attacked”).

### 9-2:09.INT

#### **Unlawful Ownership of a Dangerous Dog—Interrogatory (Bodily Injury)**

**If you find the defendant not guilty of unlawful ownership of a dangerous dog, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of unlawful ownership of a dangerous dog, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the defendant’s dog injure a person? (Answer  
“Yes” or “No”)**

## CRUELTY TO ANIMALS

**The defendant's dog injured a person only if:**

- 1. defendant owned the dog, and**
- 2. the dangerous dog inflicted bodily injury upon any person.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark "Yes" in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark "No" in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. See § 18-9-204.5(3)(b), C.R.S. 2019.

2. See Instruction F:37 (defining "bodily injury"); Instruction F:84 (defining "dangerous dog"); Instruction F:256 (defining "owner" or "owns"); see, e.g., Instruction E:28 (special verdict form).

### 9-2:10.INT

#### **Unlawful Ownership of a Dangerous Dog—Interrogatory (Serious Bodily Injury)**

**If you find the defendant not guilty of unlawful ownership of a dangerous dog, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of unlawful ownership of a dangerous dog, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**



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**Did defendant's dog seriously injure a person?  
(Answer "Yes" or "No")**

**The defendant's dog seriously injured a person  
only if:**

- 1. defendant owned the dog, and**
- 2. the dog inflicted serious bodily injury upon  
any person.**

**The prosecution has the burden to prove each  
numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide  
the prosecution has met this burden, you should mark  
"Yes" in the appropriate place, and have the foreper-  
son sign the designated line of the verdict form.**

**After considering all the evidence, if you decide  
the prosecution has failed to meet this burden, you  
should mark "No" in the appropriate place, and have  
the foreperson sign the designated line of the verdict  
form.**

**COMMENT**

1. *See* § 18-9-204.5(3)(c), C.R.S. 2019.

2. *See* Instruction F:84 (defining "dangerous dog"); Instruction F:256 (defining "owner" or "owns"); Instruction F:332 (defining "serious bodily injury"); *see, e.g.*, Instruction E:28 (special verdict form).

**9-2:11.INT**

**Unlawful Ownership of a Dangerous Dog—Interrogatory  
(Death of a Person)**

**If you find the defendant not guilty of unlawful  
ownership of a dangerous dog, you should disregard  
this instruction and fill out the verdict form reflect-  
ing your not guilty verdict.**

**If, however, you find the defendant guilty of**



unlawful ownership of a dangerous dog, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did defendant's dog kill a person? (Answer "Yes" or "No")**

**The defendant's dog killed a person only if:**

- 1. defendant owned the dog, and**
- 2. the dog caused the death of a person.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark "Yes" in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark "No" in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

#### **COMMENT**

1. *See* § 18-9-204.5(3)(d), C.R.S. 2019.

2. *See* Instruction F:84 (defining "dangerous dog"); Instruction F:256 (defining "owner" or "owns"); *see, e.g.*, Instruction E:28 (special verdict form).

#### **9-2:12.INT**

### **Unlawful Ownership of a Dangerous Dog—Interrogatory (Domestic Animal)**

**If you find the defendant not guilty of unlawful ownership of a dangerous dog, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

If, however, you find the defendant guilty of unlawful ownership of a dangerous dog, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did defendant's dog harm a domestic animal?  
(Answer "Yes" or "No")**

**The defendant's dog harmed a domestic animal only if:**

- 1. defendant owned the dog, and**
- 2. the dog injured or caused the death of any domestic animal.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark "Yes" in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark "No" in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

#### **COMMENT**

- 1. See § 18-9-204.5(3)(e)(I), C.R.S. 2019.**
- 2. See Instruction F:84 (defining "dangerous dog"); Instruction F:107 (defining "domestic animal"); Instruction F:256 (defining "owner" or "owns"); see, e.g., Instruction E:28 (special verdict form).**

#### **9-2:13.INT**

### **Unlawful Ownership of a Dangerous Dog—Interrogatory (Property)**

**If you find the defendant not guilty of unlawful**



ownership of a dangerous dog, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of unlawful ownership of a dangerous dog, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did defendant's dog harm property? (Answer "Yes" or "No")**

**The defendant's dog harmed property only if:**

- 1. defendant owned the dog, and**
- 2. the dog damaged or destroyed the property of another person.**

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark "Yes" in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark "No" in the appropriate place, and have the foreperson sign the designated line of the verdict form.

#### COMMENT

1. See § 18-9-204.5(3)(e)(III)(B.5), C.R.S. 2019.

2. See Instruction F:84 (defining "dangerous dog"); Instruction F:107 (defining "domestic animal"); Instruction F:256 (defining "owner" or "owns"); see, e.g., Instruction E:28 (special verdict form).



9-2:14

**Unauthorized Release of an Animal**

**The elements of the crime of unauthorized release of an animal are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. intentionally,**
- 4. released any animal which was lawfully confined for scientific, research, commercial, legal sporting, or educational purposes or for public safety purposes because the animal had been determined to be dangerous to people, had an infectious disease, or was quarantined to determine whether or not it had an infectious disease,**
- 5. without the consent of the owner or custodian of the animal.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized release of an animal.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized release of an animal.**

**COMMENT**

- 1. See § 18-9-206(1), C.R.S. 2019.**

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2. See Instruction F:17 (defining “animal”); Instruction F:185 (defining “intentionally”).

3. In 2016, pursuant to a legislative amendment, the Committee added the cross-reference to Instruction F:17 in Comment 2, and it deleted the prior Comment 3. See Ch. 236, sec. 1, § 18-9-201, 2016 Colo. Sess. Laws 952, 952 (providing that these definitions apply to “this part 2”).

### 9-2:15

#### **Tampering With Livestock (Tamper or Sabotage)**

The elements of the crime of tampering with livestock (tamper or sabotage) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. tampered with or sabotaged any livestock that had been registered, entered, or exhibited in any exhibition in Colorado.
- [4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with livestock (tamper or sabotage).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with livestock (tamper or sabotage).

#### COMMENT

1. See § 18-9-207(2)(a), C.R.S. 2019.

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2. See Instruction F:131 (defining “exhibition”); Instruction F:198 (defining “livestock”); Instruction F:325 (defining “sabotage”); Instruction F:361 (defining “tamper”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 9-2:16

#### **Tampering With Livestock (Unapproved Drug or Usage)**

**The elements of the crime of tampering with livestock (unapproved drug or usage) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. administered, dispensed, distributed, manufactured, possessed, sold, or used,**
- 4. any drug to or for livestock,**
- [5. that was not approved in accordance with the “Federal Food, Drug, and Cosmetic Act” by the United States Food and Drug Administration or the United States Department of Agriculture.]**
- [5. that had been approved only for investigational use in accordance with the “Federal Food, Drug, and Cosmetic Act” by the United States Food and Drug Administration or the United States Department of Agriculture, and**
- 6. the defendant used the drug for a purpose other than the approved investigational use.]**
- [\_ . and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**



the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with livestock (unapproved drug or usage).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with livestock (unapproved drug or usage).

**COMMENT**

1. See § 18-9-207(2)(b), C.R.S. 2019.

2. See Instruction F:198 (defining “livestock”); Instruction F:281 (defining “possession”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. In cases brought under section 18-9-207(2)(b), the court should determine the legal question of whether, at the time of the alleged offense, the United States Food and Drug Administration or the United States Department of Agriculture had approved (or had approved for investigational use) the drug(s) at issue. The court should use the bracketed language that reflects its determination and explain its legal ruling in a separate special instruction.

**9-2:17**

**Tampering With Livestock (Dangerous Drug)**

The elements of the crime of tampering with livestock (dangerous drug) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. administered, distributed, possessed, sold, or used,

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- 4. any dangerous drug to or for livestock,**
- 5. without a prescription for the drug that had been issued by a licensed veterinarian entitled to practice in Colorado.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with livestock (dangerous drug).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with livestock (dangerous drug).**

**COMMENT**

1. *See* § 18-9-207(2)(c), C.R.S. 2019.

2. *See* Instruction F:198 (defining “livestock”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**9-2:18**

**False Reporting of Animal Cruelty**

**The elements of the crime of false reporting of animal cruelty are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**

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3. knowingly,
4. made a false report of animal cruelty,
5. to a local law enforcement agency or to the state bureau of animal protection.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false reporting of animal cruelty.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false reporting of animal cruelty.

### COMMENT

1. See § 18-9-209(3), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. If the defendant is not separately charged with the offense of cruelty to animals (which, presumably, will usually be the case), provide the jury with the elemental instruction for the offense of cruelty to animals, but omit the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for cruelty to animals immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability. See Instructions 9-2:01 to 9-2:05.

## CHAPTER 9-3

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### CHAPTER COMMENTS

1. Section 18-9-305, C.R.S. 2019, lists several “exceptions” to the prohibitions of sections 18-9-302 to 18-9-304 which, pursuant to section



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18-9-305(5), “shall be affirmative defenses.” The Committee, however, has not drafted model affirmative defense instructions. *See* § 18-9-305(1) (specified conduct by a “news agency” or conduct on one’s “own premises for security or business purposes”); § 18-9-305(2) (listed acts by a “provider of wire or electronic communication service”); § 18-9-305(3) (providing information to an investigative or law enforcement officer who is authorized to intercept communications); § 18-9-305(4) (stating that a “good faith reliance” on a court order or a specified statutory provision “shall constitute a complete defense to any criminal action” involving communications); § 18-9-305(4.3) (excepting the interception of communications that are “readily accessible to the general public,” certain “radio” communications, and various other types of communications); § 18-9-305(4.5) (exempting pen registers, trap and trace devices, and certain acts conducted for the purpose of preventing “fraudulent, unlawful, or abusive use” of an electronic communication service); § 18-9-305(4.7) (allowing electronic communication service providers to divulge the contents of a communication pursuant to statutory authority; or with the lawful consent of a party to the communication; or to a forwarding entity; or, if inadvertently obtained and pertinent to the commission of a crime, to a law enforcement agency); § 18-9-305(4.9) (allowing a district attorney or law enforcement officer to listen to recordings or read transcriptions of communications involving a cordless telephone that were provided by a third party); *see also* § 18-9-312, C.R.S. 2019 (hostage, endangered person, or armed person in geographical area—telephone, electronic, cellular, or digital communications).

2. The Committee added this chapter in 2016.

### 9-3:01

#### **Misusing a Wiretapping or Eavesdropping Device**

**The elements of the crime of misusing a wiretapping or eavesdropping device are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. manufactured, bought, sold, or knowingly had in his [her] possession an instrument, device, contrivance, machine, or apparatus designed or commonly used for the crime of wiretapping or eavesdropping,
4. with the intent,

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5. to unlawfully use or employ or allow the same to be so used or employed.]

[3. knowingly,

4. aided, authorized, agreed with, employed, permitted, or conspired with any person to unlawfully manufacture, buy, sell, or have in his [her] possession,

5. an instrument, device, contrivance, machine, or apparatus designed or commonly used for wiretapping or eavesdropping.]

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of misusing a wiretapping or eavesdropping device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of misusing a wiretapping or eavesdropping device.

### COMMENT

1. See § 18-9-302, C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”).

3. Because this instruction refers to “the crime of wiretapping or eavesdropping,” the court should also give a modified instruction for the appropriate wiretapping or eavesdropping crime. See Instructions 9-3:02 to 9-3:11. The court should change the first element to read “That the defendant or another person,” and it should omit the two concluding paragraphs that explain the burden of proof.



9-3:02

**Wiretapping (Knowingly Overhearing, Reading, Taking, Copying, or Recording an Electronic Communication)**

The elements of the crime of wiretapping by knowingly overhearing, reading, taking, copying, or recording are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. overheard, read, took, copied, or recorded a telephone, telegraph, or electronic communication, or attempted to do so,
5. without the consent of either a sender or a receiver thereof.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of wiretapping by knowingly overhearing, reading, taking, copying, or recording.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of wiretapping by knowingly overhearing, reading, taking, copying, or recording.

**COMMENT**

1. See § 18-9-303(1)(a), C.R.S. 2019.



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2. See Instruction F:115.2 (defining “electronic communication”); Instruction F:195 (defining “knowingly”).

3. The introductory portion of the wiretapping statute indicates that it applies to a person who was “not a sender or intended receiver of a telephone or telegraph communication.” § 18-9-303(1). Subsection (1)(a), however, applies to telephone, telegraph, or electronic communications. Presumably, this disconnect arises from a 1988 amendment in which the General Assembly added the phrase “or electronic” to subsection (1)(a) but did not modify the introduction portion of subsection (1). See Ch. 118, sec. 6, § 18-9-303(1), 1988 Colo. Sess. Laws 684, 693. Thus, the statute is arguably overbroad in the context of electronic communications, as it is not limited to persons who were not senders or intended recipients of such communications. For the purposes of this particular crime, however, this appears to be irrelevant, as the crime also requires that the defendant acted “without the consent of either a sender or a receiver thereof.” Because this phrase is logically synonymous with the phrase “was not a sender or intended recipient”—that is, any person who *is* a sender or intended recipient necessarily operates with consent—the “without consent” language of the fifth element serves to limit the breadth of this crime, regardless of the type of communication at issue. For this reason, the Committee has omitted the statute’s “not a sender or intended receiver” language from this instruction.

4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

### 9-3:03

#### **Wiretapping (Intentionally, for the Purpose of Committing, Aiding, or Abetting an Unlawful Act)**

**The elements of the crime of wiretapping (intentionally, for the purpose of committing, aiding, or abetting an unlawful act) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was not a sender or intended receiver of a telephone or telegraph communication, and**

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4. intentionally,

5. overheard, read, took, copied, or recorded a telephone, telegraph, or electronic communication for the purpose of committing or aiding or abetting the commission of the unlawful act of [insert language identifying the “unlawful act[s]”].

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of wiretapping, (intentionally, for the purpose of committing, aiding, or abetting an unlawful act).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of wiretapping (intentionally, for the purpose of intentionally committing, aiding, or abetting an unlawful act).

COMMENT

1. See § 18-9-303(1)(b), C.R.S. 2019.

2. See Instruction F:115.2 (defining “electronic communication”); Instruction F:185 (defining “intentionally”); Instruction G2:05 (conspiracy).

3. The introductory portion of the wiretapping statute indicates that it applies to a person who was “not a sender or intended receiver of a telephone or telegraph communication.” § 18-9-303(1). Subsection (1)(b), however, applies to telephone, telegraph, or electronic communications. Presumably, this disconnect arises from a 1988 amendment in which the General Assembly added the phrase “or electronic” to subsection (1)(b) but did not modify the introduction portion of subsection (1). See Ch. 118, sec. 6, § 18-9-303(1), 1988 Colo. Sess. Laws 684, 693. Thus, the statute is arguably overbroad in the context of electronic communications, as it is not limited to persons who were not senders or



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intended recipients of such communications. Therefore, if it is undisputed that only electronic communications are at issue, the court should omit the third element. Conversely, if only telephonic or telegraphic communications are at issue, the court should replace “a telephone, telegraph, or electronic communication” with “such communication” in the fifth element.

4. For the fifth element, if the defendant is not separately charged with a referenced offense, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

**9-3:04**

### **Wiretapping (Knowingly Using or Disclosing)**

**The elements of the crime of wiretapping (knowingly using or disclosing) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was not a sender or intended receiver of a telephone or telegraph communication, and**
- 4. knowingly,**
- 5. used for any purpose or disclosed to any person the contents of any such communication, or attempted to do so,**
- 6. while knowing or having reason to know that such information was obtained in violation of [insert the relevant wiretapping crime].**
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**



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the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of wiretapping (knowingly using or disclosing).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of wiretapping (knowingly using or disclosing).

### COMMENT

1. *See* § 18-9-303(1)(c), C.R.S. 2019.

2. *See* Instruction F:68.5 (defining “contents”); Instruction F:195 (defining “knowingly”).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

4. This crime requires that either the defendant or another person committed a separate wiretapping crime. *See* § 18-9-303(1)(c) (discussing information obtained “in violation of this section”); Instructions 9-3:02 to 9-3:06. Therefore, if the defendant is not separately charged with the pertinent wiretapping crime, the court should provide the jury with the elemental instruction for that offense, replacing the phrase “That the defendant” with “That the defendant or another person,” and omitting the two concluding paragraphs that explain the burden of proof. The court should place the elemental instruction for that wiretapping crime immediately after the above instruction (or as close to it as practicable), and it should provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

### 9-3:05

#### Wiretapping (Tapping or Intercepting Device)

The elements of the crime of wiretapping (tapping or intercepting device) are:

1. That the defendant,

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2. in the State of Colorado, at or about the date and place charged,

3. was not a sender or intended receiver of a telephone or telegraph communication, and

4. knowingly,

5. tapped or made a connection with any telephone or telegraph line, wire, cable, or instrument belonging to another or with any electronic, mechanical, or other device belonging to another or installed any device whether connected or not which permits the interception of messages.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of wiretapping (tapping or intercepting device).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of wiretapping (tapping or intercepting device).

### COMMENT

1. See § 18-9-303(1)(d), C.R.S. 2019.

2. See Instruction F:116.5 (defining “electronic, mechanical, or other device”); Instruction F:185.3 (defining “intercept”); Instruction F:195 (defining “knowingly”).

3. The Committee has included the third element because its language appears in the statute. See § 18-9-303(1). However, the Committee questions whether this exempting language regarding a sender or intended receiver of a particular communication should apply to this offense. This particular wiretapping crime prohibits tapping phone lines

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generally—it does not apply to specific communications. Thus, it is difficult to see how someone who lawfully sends or receives specific messages would be exempt.

**9-3:06**

### **Wiretapping (Apparatus)**

**The elements of the crime of wiretapping (apparatus) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was not a sender or intended receiver of a telephone or telegraph communication, and**
- 4. knowingly,**
  - [5. used any apparatus to unlawfully do, or cause to be done, [insert the relevant wiretapping crime].]**
  - [5. aided, authorized, agreed with, employed, permitted, or intentionally conspired with any person to commit [insert the relevant wiretapping crime].]**
  - [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of wiretapping (apparatus).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you**



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**should find the defendant not guilty of wiretapping (apparatus).**

### COMMENT

1. See § 18-9-303(1)(f), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction G2:05 (conspiracy).

3. This crime requires that either the defendant or another person committed a separate wiretapping crime. See § 18-9-303(1)(f); Instructions 9-3:02 to 9-3:06. Therefore, if the defendant is not separately charged with the pertinent wiretapping crime, the court should provide the jury with the elemental instruction for that offense, replacing the phrase “That the defendant” with “That the defendant or another person,” and omitting the two concluding paragraphs that explain the burden of proof. The court should place the elemental instruction for that wiretapping crime immediately after the above instruction (or as close to it as practicable), and it should provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

### 9-3:07.INT

#### Wiretapping—Interrogatory

**If you find the defendant not guilty of wiretapping, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of wiretapping, you should sign the verdict form to indicate your finding of guilt and answer the following verdict question:**

**Did the wiretapping involve a cordless telephone?  
(Answer “Yes” or “No”)**

**The wiretapping involved a cordless telephone only if:**

1. the [communication] [line, wire, cable, instrument, or device] [apparatus] at issue in the wiretapping offense that the defendant committed involved a cordless telephone.

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The prosecution has the burden to prove, beyond a reasonable doubt, that the wiretapping did not involve a cordless telephone. In order to meet this burden, the prosecution must disprove, beyond a reasonable doubt, the above numbered condition.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should find that the wiretapping solely involved a cordless telephone, mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has met this burden, you should find that the wiretapping did not solely involve a cordless telephone, mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. *See* § 18-9-303(2), C.R.S. 2019.

2. This interrogatory is drafted in the same format used for other sentence mitigating factors. *See, e.g.*, Instruction 3-2:07.INT (First Degree Assault—Interrogatory (Provoked And Sudden Heat Of Passion)).

3. The term “cordless telephone” is not defined by statute.

4. *See* *People v. Richardson*, 983 P.2d 5, 8 (Colo. 1999) (“Because the plain language of [the wiretapping statute] demonstrates a general purpose of protecting the privacy of telephone or telegraph communications, we hold that the statutory classification distinguishing between corded and cordless phones is based on differences that are real in fact and that are reasonably related to the relative ease of intercepting cordless telephone calls.” (citation omitted)).

### 9-3:08

#### Eavesdropping (Knowingly Overhearing or Recording)

The elements of the crime of eavesdropping (knowingly overhearing or recording) are:

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1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was not visibly present during a conversation or discussion, and
4. knowingly,
5. overheard or recorded such conversation or discussion without the consent of at least one of the principal parties thereto, or attempted to do so.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of eavesdropping (knowingly overhearing or recording).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of eavesdropping (knowingly overhearing or recording).

### COMMENT

1. See § 18-9-304(1)(a), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:254.7 (defining “oral communication,” which, as explained in the next comment, has been held to be synonymous with the terms “conversation or discussion”).

3. Although the terms “conversation or discussion” are not defined by statute, in *People v. Blehm*, 623 P.2d 411, 417 (Colo. App. 1980), a division of the court of appeals held that “the terms ‘conversation or discussion’ in § 18-9-304 . . . are synonymous with the term ‘oral communication’ as defined in § 18-9-301(8)”; see also *People v. Lesslie*, 939



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P.2d 443, 449 (Colo. App. 1996) (holding that in a criminal eavesdropping prosecution, the defendant's proposed instructions concerning the definition of "oral communication" were properly rejected as misleading to extent that they would have enabled the jury to reconsider the trial court's legal determination that occupants of a restroom had an objectively reasonable expectation of privacy).

4. In the absence of case law on point, the Committee takes no position on whether the word "attempted" in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

9-3:09

### **Eavesdropping (Intentionally Overhearing or Recording)**

**The elements of the crime of eavesdropping (intentionally overhearing or recording) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was not visibly present during a conversation or discussion, and
4. intentionally,
5. overheard or recorded such conversation or discussion for the purpose of committing, aiding, or abetting the commission of [insert description of the unlawful act(s)].
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of eavesdropping (intentionally overhearing or recording).

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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of eavesdropping (intentionally overhearing or recording).

### COMMENT

1. See § 18-9-304(1)(b), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:254.7 (defining “oral communication,” which, as explained in Comment 3 to Instruction 9-3:08, has been held to be synonymous with the terms “conversation or discussion”).

3. If the defendant is not separately charged with a referenced offense for the purpose of element 5, the court should give a modified version of the elemental instruction for the offense. The court should replace the phrase “That the defendant” with “That the defendant or another person” in the first element, it should remove the phrase “at or about the date and place charged” from the second element, and it should omit the two concluding paragraphs that explain the burden of proof. Place this modified instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

### 9-3:10

#### Eavesdropping (Knowing Use or Disclosure)

The elements of the crime of eavesdropping (use or disclosure) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged.
3. was not visibly present during a conversation or discussion, and
4. knowingly,
5. used for any purpose, disclosed, or attempted to use or disclose to any other person the contents of such conversation or discussion,



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6. while knowing or having reason to know the information was obtained by eavesdropping.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of eavesdropping (use or disclosure).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of eavesdropping (use or disclosure).

### COMMENT

1. See § 18-9-304(1)(c), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:254.7 (defining “oral communication,” which, as explained in Comment 3 to Instruction 9-3:08, has been held to be synonymous with the terms “conversation or discussion”).

3. This crime requires that either the defendant or another person committed a separate eavesdropping crime. See § 18-9-304(1)(c) (discussing information obtained “in violation of this section”); Instructions 9-3:08 to 9-3:11. Therefore, if the defendant is not separately charged with the pertinent eavesdropping crime, the court should provide the jury with the elemental instruction for that offense, replacing the phrase “That the defendant” with “That the defendant or another person,” and omitting the two concluding paragraphs that explain the burden of proof. The court should place the elemental instruction for that wiretapping crime immediately after the above instruction (or as close to it as practicable), and it should provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).



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9-3:11

### Eavesdropping (Conspiracy)

The elements of the crime of eavesdropping (conspiracy) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was not visibly present during a conversation or discussion, and
4. knowingly,
5. aided, authorized, agreed with, employed, permitted, or intentionally conspired with any person to commit eavesdropping.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of eavesdropping (with any person).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of eavesdropping (with any person).

#### COMMENT

1. See § 18-9-304(1)(d), C.R.S. 2019.

2. See Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:254.7 (defining “oral communication,” which, as explained in Comment 3 to Instruction 9-3:08, has been held to be synonymous with the terms “conversation or discussion”); Instruction G2:05 (conspiracy).

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3. This crime requires that either the defendant or another person committed a separate eavesdropping crime. *See* § 18-9-304(1)(d); Instructions 9-3:08 to 9-3:10. Therefore, if the defendant is not separately charged with the pertinent eavesdropping crime, the court should provide the jury with the elemental instruction for that offense, replacing the phrase “That the defendant” with “That the defendant or another person,” and omitting the two concluding paragraphs that explain the burden of proof. The court should place the elemental instruction for that wiretapping crime immediately after the above instruction (or as close to it as practicable), and it should provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

### **9-3:12**

#### **Abuse of Telephone and Telegraph Service (Divulging Message)**

**The elements of the crime of abuse of telephone and telegraph service (divulging message) are:**

- 1. That the defendant**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was an employee of a telegraph or telephone company, and**
- 4. knowingly,**
- 5. divulged the contents or the purport of any message or part thereof sent or intended to be sent to any person other than one to whom said message was sent or person authorized to receive the same.**

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-**

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**dant guilty of abuse of telephone and telegraph service (divulging message).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of telephone and telegraph service (divulging message).**

### COMMENT

1. See § 18-9-306(1)(a), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).
3. Because jurors may not be aware that “purport” can be used as a noun, it may be appropriate to define the term. See, e.g., *Webster’s Third New International Dictionary* 1847 (2002) (defining “purport” as the “meaning conveyed, professed, or implied”).

### 9-3:13

#### **Abuse of Telephone and Telegraph Service (False Message)**

**The elements of the crime of abuse of telephone and telegraph service (false message) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. sent or delivered a false message or furnished or conspired to furnish such message to an operator to be sent or delivered,
5. with intent,
6. to injure, deceive, or defraud any person, corporation, or the public.

**[7. and that the defendant’s conduct was not**



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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of telephone and telegraph service (false message).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of telephone and telegraph service (false message).**

**COMMENT**

1. *See* § 18-9-306(1)(b), C.R.S. 2019.
2. *See* Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction G2:05 (conspiracy).
3. It may be appropriate to modify the fourth element by adding either “telephone or “telegraph” as an adjective to modify the word “operator,” or by adding either “telephonic” or “telegraphic” as an adjective to modify the word “message.”

**9-3:14**

**Abuse of Telephone and Telegraph Service (Opening a Sealed Envelope)**

**The elements of the crime of abuse of telephone and telegraph service (opening a sealed envelope) are:**

1. **That the defendant,**
2. **in the State of Colorado, at or about the date and place charged,**
3. **knowingly,**
4. **without authorization,**

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**5. opened a sealed envelope enclosing a message with the purpose of learning its contents.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of telephone and telegraph service (opening a sealed envelope).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of telephone and telegraph service (opening a sealed envelope).**

### COMMENT

1. See § 18-9-306(1)(c), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. It may be appropriate to modify the fifth element by adding either “telephonic” or “telegraphic” as an adjective to modify the word “message.”

### 9-3:15

#### **Abuse of Telephone and Telegraph Service (Impersonating Another)**

**The elements of the crime of abuse of telephone and telegraph service (impersonating another) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with the intent,**

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**4. to use, destroy, or detain a message directed to another person,**

**5. impersonated such person, and thereby procured the delivery to himself [herself] of the message directed to such person.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of telephone and telegraph service (impersonating another).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of telephone and telegraph service (impersonating another).**

**COMMENT**

1. *See* § 18-9-306(1)(d), C.R.S. 2019.

2. *See* Instruction F:185 (defining “with intent”).

3. It may be appropriate to modify the fourth and fifth elements by adding either “telephonic” or “telegraphic” as an adjective to modify the word “message.”

**9-3:16**

**Abuse of Telephone and Telegraph Service (Reading a Message)**

**The elements of the crime of abuse of telephone and telegraph service (reading a message) are:**

**1. That the defendant,**



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2. in the State of Colorado, at or about the date and place charged,

3. knowingly,

4. without authorization,

5. read or learned the contents or meaning of a message on its transit and used or communicated to another any information so obtained.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of telephone and telegraph service (reading a message).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of telephone and telegraph service (reading a message).

### COMMENT

1. See § 18-9-306(1)(e), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. In some cases, it may be appropriate to modify the fifth element by adding either “telephonic” or “telegraphic” as an adjective to modify the word “message.”

### 9-3:17

#### Abuse of Telephone and Telegraph Service (Bribery)

The elements of the crime of abuse of telephone and telegraph service (bribery) are:

1. That the defendant,

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2. in the State of Colorado, at or about the date and place charged,

3. knowingly,

4. bribed a telegraph or telephone operator or employee of a telegraph or telephone company to disclose any private message or the purport of the same received by him [her] by reason of his [her] trust as agent of the company or used such information when thus obtained.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of telephone and telegraph service (bribery).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of telephone and telegraph service (bribery).

### COMMENT

1. See § 18-9-306(1)(f), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. The term “bribe” is not defined in this chapter, but the meaning should be evident from the context. Do not define the term based on section 18-8-302, C.R.S. 2019, as the bribery offense defined in that section relates only to the bribery of a “public servant.”

4. Because jurors may not be aware that “purport” can be used as a noun, it may be appropriate to define the term. See, e.g., *Webster's Third New International Dictionary* 1847 (2002) (defining “purport” as the “meaning conveyed, professed, or implied”).

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9-3:18

### Obstruction of Telephone or Telegraph Service

The elements of the crime of obstruction of telephone or telegraph service are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. prevented, obstructed, or delayed, by any means whatsoever, the sending, transmission, conveyance, or delivery in Colorado of any message, communication, or report by or through any telegraph or telephone line, wire, cable, or other facility or any cordless, wireless, electronic, mechanical, or other device.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of obstruction of telephone or telegraph service.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of obstruction of telephone or telegraph service.

#### COMMENT

1. See § 18-9-306.5, C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); see also Instruction



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F:116.5 (defining “electronic, mechanical, or other device” pursuant to section 18-9-301(4), C.R.S. 2019, which applies to terms “used in sections 18-9-301 to 18-9-305”).

### **9-3:19**

#### **Refusal to Yield a Party Line**

**The elements of the crime of refusal to yield a party line are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. willfully,**
- 4. refused to immediately yield or surrender the use of a party line when informed that the line was needed for an emergency call to a fire department, or police department, or sheriff's office or for medical aid or ambulance service.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of refusal to yield a party line.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of refusal to yield a party line.**

#### **COMMENT**

1. See § 18-9-307(2), C.R.S. 2019.

2. See Instruction F:116.8 (defining “emergency” (party line)); Instruc-

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tion F:195 (defining “willfully”); Instruction F:258.3 (defining “party line”).

3. Section 18-9-307(2) states that it “shall not apply to persons using a party line for such an emergency call.” However, the Committee has not drafted a model affirmative defense instruction.

### 9-3:20

#### Pretextual Request for a Party Line

The elements of the crime of pretextual request for a party line are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing,
4. that no emergency in fact existed,
5. requested the use of a party line on the pretext that an emergency existed.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of pretextual request for a party line.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of pretextual request for a party line.

#### COMMENT

1. See § 18-9-307(3), C.R.S. 2019.

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2. See Instruction F:116.8 (defining “emergency” (party line)); Instruction F:195 (defining “knowingly”); Instruction F:258.3 (defining “party line”).

9-3:21

### Publishing Telephone Directory Without Notice

The elements of the crime of publishing a telephone directory without notice are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a person, firm, or corporation providing telephone service, and
4. distributed or caused to be distributed in this state a telephone directory published for distribution to the members of the general public, and
5. the directory was not a directory distributed solely for business advertising purposes (commonly known as a “classified directory”), and
6. the directory did not contain a notice, printed in no smaller than ten-point type and preceded by the word “WARNING,” explaining the crime[s] of [refusal to yield a party line] [pretextual request for a party line].

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of publishing a telephone directory without notice.



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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of publishing a telephone directory without notice.

### COMMENT

1. See § 18-9-308, C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the qualifying felony offense(s). See Instruction 9-3:19 (refusal to yield a party line); 9-3:20 (pretextual request for a party line).

### 9-3:22

#### Telecommunications Crime (Device)

The elements of telecommunications crime (device) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. accessed, used, manipulated, or damaged any telecommunications device without the authority of the owner or person who had the lawful possession or use thereof.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of telecommunications crime (device).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of telecommunications crime (device).

### COMMENT

1. See § 18-9-309(2)(a), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:363 (defining “telecommunications device”).
3. The statute includes exemptions from criminal liability for authorized work by telecommunications providers, law enforcement activities in penal and correctional facilities, and authorized governmental monitoring or interception of cellular telephone service. See § 18-9-309(5), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### 9-3:23

#### Telecommunications Crime (Illegal Equipment)

The elements of telecommunications crime (illegal equipment) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. made, possessed, or used illegal telecommunications equipment, and
5. did not use cloning equipment to create a cloned cellular phone.
- [6. and that the defendant’s conduct was not

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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of telecommunications crime (illegal equipment).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of telecommunications crime (illegal equipment).**

### COMMENT

1. *See* § 18-9-309(2)(b), C.R.S. 2019.

2. *See* Instruction F:55 (defining “cloned cellular phone”); Instruction F:55.5 (defining “cloning equipment”); Instruction F:175.7 (defining “illegal telecommunications equipment”); Instruction F:195 (defining “knowingly”).

3. Regarding the fifth element, the statute provides that a person commits a class 3 misdemeanor if he “[m]akes, possesses, or uses illegal telecommunications equipment; *except that a person who knowingly uses cloning equipment to create a cloned cellular phone commits a class 4 felony as provided in subsection (4) of this section*” (emphasis added). § 18-9-309(2)(b), C.R.S. 2019. Because subsection (2)(b) uses the word “except” in the same sentence as the conduct defining the misdemeanor, the Committee has concluded that this language constitutes a negative element of the misdemeanor that the prosecution must disprove. *See* *People v. Reed*, 932 P.2d 842, 844 (Colo. App. 1996) (“When an exception is included in a statutory section defining the elements of the offense, it is generally the burden of the prosecution to prove that the exception does not apply.”).

The Committee notes that the misdemeanor under subsection (2)(b) makes reference to the separate felony of improper use of cloning equipment, as criminalized in subsection (4). *See* Instruction 9-3:30. However, the misdemeanor is not a lesser included offense of the felony; rather, the “except” clause demonstrates that the two offenses are mutually exclusive. *Cf. People v. Shields*, 822 P.2d 15, 19 (Colo. 1991) (“[S]econd-degree sexual assault *is not a lesser included offense* of first-degree sexual assault . . . Second-degree sexual assault requires some means of causing, or contributing to causing, the victim’s submission that is



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different in kind from the means specified in the first-degree sexual assault statute but essential to causing the submission of the victim. Establishment of the elements of first-degree sexual assault, therefore, can never establish all of the elements required to prove second-degree sexual assault. We therefore hold that under this statutory scheme the offenses of first- and second-degree sexual assault *are mutually exclusive*.” (emphasis added)).

4. The statute includes exemptions from criminal liability for authorized work by telecommunications providers, law enforcement activities in penal and correctional facilities, and authorized governmental monitoring or interception of cellular telephone service. *See* § 18-9-309(5), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### 9-3:24

#### Telecommunications Crime (Illegal Equipment to Another)

The elements of telecommunications crime (illegal equipment to another) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. sold, gave, or furnished to another or advertised or offered for sale illegal telecommunications equipment.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of telecommunications crime (illegal equipment to another).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more

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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of telecommunications crime (illegal equipment to another).**

### COMMENT

1. *See* § 18-9-309(2)(c), C.R.S. 2019.

2. *See* Instruction F:175.7 (defining “illegal telecommunications equipment”); Instruction F:195 (defining “knowingly”).

3. The statute includes exemptions from criminal liability for authorized work by telecommunications providers, law enforcement activities in penal and correctional facilities, and authorized governmental monitoring or interception of cellular telephone service. *See* § 18-9-309(5), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### 9-3:25

#### Telecommunications Crime (Plans or Instructions)

**The elements of telecommunications crime (plans or instructions) are:**

1. **That the defendant,**
2. **in the State of Colorado, at or about the date and place charged,**
3. **knowingly,**
4. **sold, gave, or furnished to another or advertised or offered for sale any plans or instructions for making, assembling, or using illegal telecommunications equipment.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of telecommunications crime (plans or instructions).**

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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of telecommunications crime (plans or instructions).

### COMMENT

1. *See* § 18-9-309(2)(d), C.R.S. 2019.

2. *See* Instruction F:175.7 (defining “illegal telecommunications equipment”); Instruction F:195 (defining “knowingly”).

3. The statute includes exemptions from criminal liability for authorized work by telecommunications providers, law enforcement activities in penal and correctional facilities, and authorized governmental monitoring or interception of cellular telephone service. *See* § 18-9-309(5), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### 9-3:26

#### Telecommunications Crime (Number or Code)

The elements of telecommunications crime (number or code) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. sold, rented, lent, gave, published, or otherwise transferred or disclosed to another or offered or advertised for sale or rental the number or code of a counterfeited, cancelled, expired, revoked, or nonexistent telephone number or credit card number or method of numbering or coding which is employed in the issuance of telephone numbers access devices or credit card numbers or an existing number or code or method of numbering or coding,



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**5. without the authority of the owner or person who had the lawful possession or use thereof.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of telecommunications crime (number or code).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of telecommunications crime (number or code).**

### COMMENT

1. See § 18-9-309(2)(e), C.R.S. 2019.

2. See Instruction F:04.5 (defining "access device"); Instruction F:78.2 (defining "credit card number"); Instruction F:195 (defining "knowingly"); Instruction F:363 (defining "telecommunications device").

3. The statute includes exemptions from criminal liability for authorized work by telecommunications providers, law enforcement activities in penal and correctional facilities, and authorized governmental monitoring or interception of cellular telephone service. See § 18-9-309(5), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### 9-3:27

#### **Telecommunications Crime (Theft of Service by Fraudulent Means)**

**The elements of the crime of telecommunications crime (theft of service by fraudulent means) are:**

**1. That the defendant,**

**2. in the State of Colorado, at or about the date and place charged,**

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3. knowingly,
4. obtained any telecommunications service,
5. by charging such service to or causing such service to be charged to an existing telephone number, access device, or credit card number without the authority of the person to whom issued or of the subscriber thereto or of the lawful holder thereof or to a nonexistent, counterfeit, expired, revoked, or cancelled credit card number, or by any method of code calling, or by installing, rearranging, or tampering with any equipment, physically or electronically, or by the use of any other fraudulent means, method, trick, or device or scheme.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of telecommunications crime (theft of service by fraudulent means).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of telecommunications crime (theft of service by fraudulent means).

COMMENT

1. See § 18-9-309(3)(a), C.R.S. 2019.

2. See Instruction F:04.5 (defining “access device”); Instruction F:78.2 (defining “credit card number”); Instruction F:195 (defining “knowingly”); Instruction F:364 (defining “telecommunications service”).

3. The term “code calling” is not defined by statute.

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4. The statute includes exemptions from criminal liability for authorized work by telecommunications providers, law enforcement activities in penal and correctional facilities, and authorized governmental monitoring or interception of cellular telephone service. *See* § 18-9-309(5), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

**9-3:28**

### **Telecommunications Crime (Theft of Service With Fraudulent Intent)**

**The elements of the crime of telecommunications crime (theft of service with fraudulent intent) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly, and**
- 4. with fraudulent intent,**
- 5. obtained telecommunications service through the use of a false or fictitious name, telephone number, address, or credit information or through the unauthorized use of the name, telephone number, address, or credit information of another.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of telecommunications crime (theft of service with fraudulent intent).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**



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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of telecommunications crime (theft of service with fraudulent intent).**

**COMMENT**

1. *See* § 18-9-309(3)(b), C.R.S. 2019.

2. *See* Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:364 (defining “telecommunications service”).

3. The statute includes exemptions from criminal liability for authorized work by telecommunications providers, law enforcement activities in penal and correctional facilities, and authorized governmental monitoring or interception of cellular telephone service. *See* § 18-9-309(5), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

**9-3:29.INT**

**Telecommunications Crime (Theft of Service)—  
Interrogatory (Value)**

**If you find the defendant not guilty of telecommunications crime (theft of service), you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of telecommunications crime (theft of service), you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question[s] on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]**

**1. Was the value of the thing involved in the telecommunications crime (theft of service) [insert a description of the amount(s) from section 18-4-401(2) or section 18-6.5-103(5), (5.5) (at-risk persons)]? (Answer “Yes” or “No”)**

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[2. Was the value of the thing involved in the telecommunications crime (theft of service) [insert a description of the amount(s) from section 18-4-401(2)]? (Answer “Yes” or “No”)]

[3. Was the value of the thing involved in the telecommunications crime (theft of service) [insert a description of the amount(s) from section 18-4-401(2)]? (Answer “Yes” or “No”)]

The prosecution has the burden to prove the value of the thing involved beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-9-309(3), C.R.S. 2019 (incorporating section 18-4-401).

2. See, e.g., E:28 (special verdict form); Instruction 4-4:06.INT, Comments 3–4 (directions for multiple valuation questions).

3. It is unclear whether section 18-9-309(3) incorporates the provisions of section 18-4-401(4)(a), (b), C.R.S. 2019 (multiple thefts aggregated and charged in the same count; thefts from the same person pursuant to one scheme or course of conduct aggregated and charged in the same count), which are embodied in Instruction 4-4:16.INT.

### 9-3:30

#### Telecommunications Crime (Cloning Equipment)

The elements of the crime of unlawful use of telecommunications crime (cloning equipment) are:



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- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. used cloning equipment to intercept signals, including signals transmitted to or from cellular phones, between a telecommunications provider and persons using telecommunications services or between persons using telecommunications services; or used cloning equipment to create a cloned cellular phone.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of telecommunications crime (cloning equipment).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of telecommunications crime (cloning equipment).**

**COMMENT**

1. *See* § 18-9-309(4)(a), C.R.S. 2019.
2. *See* Instruction F:48 (defining “cellular phone”); Instruction F:55 (defining “cloned cellular phone”); Instruction F:55.5 (defining “cloning equipment”); Instruction F:195 (defining “knowingly”); Instruction F:363.3 (defining “telecommunications provider” (telecommunications crime)); Instruction F:364 (defining “telecommunications service”).
3. *See* § 18-9-309(4)(c), C.R.S. 2019 (“Each violation of this subsection (4), including each instance of intercepting signals or of creating a cloned cellular phone, shall be a separate offense.”).
4. The statute includes exemptions from criminal liability for au-



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thorized work by telecommunications providers, law enforcement activities in penal and correctional facilities, and authorized governmental monitoring or interception of cellular telephone service. *See* § 18-9-309(5), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### 9-3:31

#### **Telecommunications Crime (Cloning Equipment; Aiding or Abetting)**

The elements of the crime of unlawful use of telecommunications crime (cloning equipment; aiding or abetting) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. aided, abetted, advised, or encouraged one or more persons who,
4. knowingly,
5. used cloning equipment to intercept signals, including signals transmitted to or from cellular phones, between a telecommunications provider and persons using telecommunications services or between persons using telecommunications services; or used cloning equipment to create a cloned cellular phone.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of telecommunications crime (cloning equipment; aiding or abetting).

After considering all the evidence, if you decide

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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of telecommunications crime (cloning equipment; aiding or abetting).**

### COMMENT

1. *See* § 18-9-309(4)(b), C.R.S. 2019.

2. *See* Instruction F:48 (defining “cellular phone”); Instruction F:55 (defining “cloned cellular phone”); Instruction F:55.5 (defining “cloning equipment”); Instruction F:195 (defining “knowingly”); Instruction F:363.3 (defining “telecommunications provider” (telecommunications crime)); Instruction F:364 (defining “telecommunications service”); Instruction G2:05 (conspiracy); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. *See* § 18-9-309(4)(c), C.R.S. 2019 (“Each violation of this subsection (4), including each instance of intercepting signals or of creating a cloned cellular phone, shall be a separate offense.”).

4. The statute includes exemptions from criminal liability for authorized work by telecommunications providers, law enforcement activities in penal and correctional facilities, and authorized governmental monitoring or interception of cellular telephone service. *See* § 18-9-309(5), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### 9-3:32

#### Unlawful Use of Information

**The elements of the crime of unlawful use of information are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. obtained information pursuant to a court order for wiretapping or eavesdropping, and**



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4. knowingly,

5. used, published, or divulged the information to any person or in any manner, and

6. was not authorized to do so as a(n) [insert a description of the relevant provision granting authority from section 16-15-102(12) to (14), C.R.S. 2019, which is incorporated by section 18-9-305(4.7)(a), C.R.S. 2019].

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully use of information.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful use of information.

### COMMENT

1. See § 18-9-310, C.R.S. 2019.

2. Section 18-9-310 states that it prohibits disclosure “not authorized by this part 3.” This appears to be a reference to the permissible disclosure provisions of the wiretapping statute, see § 16-15-102(12) to (14), C.R.S. 2019 (investigative and grand jury disclosures), which are incorporated by the permissible disclosure provisions of section 18-9-305(4.7)(a), C.R.S. 2019 (disclosures by electronic communication service providers). Accordingly, it may be necessary to draft an instruction that discusses in greater detail the statutory authority to use such information.

### 9-3:33

## Misuse of an Automated Dialing System

The elements of the crime of misuse of an automated dialing system are:



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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. utilized an automated dialing system with a prerecorded message,
  4. for the purpose of soliciting another person to purchase goods or services, whether such solicitation occurred or was intended to occur during the prerecorded message or during some further communication initiated by or resulting from the prerecorded message, and
  5. there was no existing business relationship between such persons, or, if there was an existing business relationship, the person being called did not then consent to hear the prerecorded message.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of misuse of an automated dialing system.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of misuse of an automated dialing system.

COMMENT

1. See § 18-9-311(1), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 ("Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that

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offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The term “automated dialing system” is not defined by statute.

### 9-3:34

#### **Unlawfully Making Available On the Internet Personal Information About a Law Enforcement Official**

The elements of unlawfully making available, on the internet, personal information about a law enforcement official are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. made available on the internet personal information about a law enforcement official or the official’s immediate family member, and
  5. the dissemination of the personal information posed an imminent and serious threat to the law enforcement official’s safety or the safety of the law enforcement official’s immediate family, and
  6. the defendant knew or reasonably should have known of the imminent and serious threat.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully making available on the internet personal information about a law enforcement official.

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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully making available on the internet personal information about a law enforcement official.

### COMMENT

1. See § 18-9-313(2), C.R.S. 2019.
2. See Instruction F:177.3 (defining “immediate family” (law enforcement official)); Instruction F:195 (defining “knowingly”); Instruction F:196.3 (defining “law enforcement official”); Instruction F:272.5 (defining “personal information”).

### + 9-3:34.5

#### Unlawfully Making Available on the Internet Personal Information About a Caseworker

The elements of unlawfully making available, on the internet, personal information about a caseworker are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. made available on the internet personal information about a caseworker or the caseworker’s immediate family, and
5. the dissemination of personal information posed an imminent and serious threat to the caseworker’s safety or the safety of the caseworker’s immediate family, and
6. the defendant knew or reasonably should have known of the imminent and serious threat.



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- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully making available on the internet personal information about a caseworker.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully making available on the internet personal information about a caseworker.

### COMMENT

1. See § 18-9-313(2.7), C.R.S. 2019.

2. See Instruction F:45.5 (defining “caseworker”); Instruction F:177.3 (defining “immediate family” (law enforcement official)); Instruction F:195 (defining “knowingly”); Instruction F:272.5 (defining “personal information”).

3. + The Committee added this instruction in 2019 pursuant to new legislation. See Ch. 95, sec. 1, § 18-9-313(2.7), 2019 Colo. Sess. Laws 349, 349.

### 9-3:35

## Interference With Lawful Distribution of Newspapers

The elements of the crime of interference with lawful distribution of newspapers are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. obtained or exerted control over more than five copies of an edition of a newspaper from a newspaper distribution container owned or leased by the newspaper publisher,

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4. with the intent,

5. to prevent other individuals from reading that edition of the newspaper, and

6. there was a notice on the newspaper or on the newspaper distribution container that possession of more than five copies with intent to prevent other individuals from reading that edition of the newspaper was illegal.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference with lawful distribution of newspapers.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference with lawful distribution of newspapers.

COMMENT

1. See § 18-9-314(1), C.R.S. 2019.

2. See Instruction F:114.5 (defining “edition of a newspaper”); Instruction F:241.8 (defining “newspaper”); Instruction F:266.8 (defining “periodical”).

3. The third element of the model instruction does not include the word “unauthorized” as an adjective modifying “control” because the definition of “unauthorized control,” from section 18-9-314(1), is set forth in the sixth element.

4. The statute includes an exemption from criminal liability. See § 18-9-314(5), C.R.S. 2019 (“This section shall not apply to a person who, with the authority or permission of the person who possesses real or personal property, removes or disposes of newspapers that have been deposited in or left on that property without the authority or permission

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of the person who possesses the real or personal property.”). However, the Committee has not drafted a model affirmative defense instruction.

### 9-3:36.INT

#### Interference With Lawful Distribution of Newspapers— Interrogatory (Number of Newspapers)

If you find the defendant not guilty of interference with lawful distribution of newspapers, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of interference with lawful distribution of newspapers, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]

[. Did the interference with lawful distribution of newspapers involve five hundred or more newspapers?]

[. Did the interference with lawful distribution of newspapers involve more than one hundred and fewer than five hundred newspapers?]

The prosecution has the burden to prove the number of newspapers beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have



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**the foreperson sign the designated line of the verdict form.**

### COMMENT

1. *See* § 18-9-314(2), C.R.S. 2019.
2. *See, e.g.*, E:28 (special verdict form).
3. *See, e.g.*, 18:22.INT (cultivating or growing marijuana - interrogatory (number of plants)), Comments 3-4 (dispute as to the number of items; submission of multiple questions concerning the number of items).

## CHAPTER 10

### GAMBLING OFFENSES

#### CHAPTER COMMENTS

1. Section 18-10-108, C.R.S. 2019, which is titled “Exceptions,” provides as follows: “Nothing contained in this article 10 shall be construed to modify, amend, or otherwise affect the validity of any provisions contained in part 6 of article 21 of title 24 [(Bingo and Raffles Law)] and articles 30 [(Colorado Limited Gaming Act)] and 32 [(Racing)] of title 44.” *See also* § 18-10-102(2)(c), C.R.S. 2019 (providing that “gambling” does not include “[o]ther acts or transactions now or hereafter expressly authorized by law”). However, the Committee has not drafted model affirmative defense instructions.

2. The court should not ask the jury to make a finding regarding whether a defendant is a “repeating gambling offender” as defined in section 18-10-102(9), C.R.S. 2019. Although COLJI-Crim. 27:13, 27:14, and 27:15 (1983) defined three separate offenses of “repeating gambling offender” based on section 18-10-102(9), the Committee is now of the view that the trial court should make this determination at sentencing. *See People v. Nunn*, 148 P.3d 222, 228 (Colo. App. 2006) (holding that, under the prior conviction exception to the rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), the defendant in habitual criminal proceedings “had no right to have a jury determine whether he was the person convicted in the prior cases”).

3. The Committee added this chapter in 2016.

4. In 2018, the Committee modified the quotation in Comment 1 pursuant to legislative amendments. *See* Ch. 26, sec. 13, § 18-10-108, 2018 Colo. Sess. Laws 285, 322; Ch. 274, sec. 94, § 18-10-108, 2018 Colo. Sess. Laws 1694, 1726.

## **GAMBLING OFFENSES**

**10:01**

### **Gambling**

**The elements of the crime of gambling are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. engaged in gambling.**

**[4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gambling.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gambling.**

### **COMMENT**

1. *See* § 18-10-103(1), C.R.S. 2019.

2. *See* Instruction F:160.2 (defining “gambling”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**10:02**

### **Professional Gambling**

**The elements of the crime of professional gambling are:**

## COLORADO JURY INSTRUCTIONS—CRIMINAL

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. engaged in professional gambling.
- [4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of professional gambling.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of professional gambling.

### COMMENT

1. See § 18-10-103(2), C.R.S. 2019.

2. See Instruction F:287.2 (defining “professional gambling”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

10:03

### Possession of a Gambling Device or Record

The elements of the crime of possession of a gambling device or record are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,



## GAMBLING OFFENSES

3. knowing,

4. that a gambling device or gambling record was to be used in professional gambling,

5. owned, manufactured, sold, transported, possessed, or engaged in any transaction designed to affect the ownership, custody, or use of such device or record.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of a gambling device or record.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of a gambling device or record.

### COMMENT

1. See § 18-10-105(1), C.R.S. 2019.

2. See Instruction F:160.3 (defining “gambling device”); Instruction F:160.7 (defining “gambling record”); Instruction F:195 (defining “knowingly”); Instruction F:287.2 (defining “professional gambling”).

3. Section 18-10-105(1), C.R.S. 2019, incorporates exceptions for conduct authorized by section 18-10-105(1.5), which provides as follows:

The sale, transportation, manufacture, and remanufacture of gambling devices, including the acquisition of essential parts therefor and the assembly of such parts, is permitted if such devices are sold, transported, manufactured, and remanufactured only for transportation in interstate or foreign commerce when such transportation is not prohibited by any applicable foreign, state, or federal law. Storage of gambling devices is also permitted but only for purposes of manufacturing, remanufacturing, and transporting such devices in interstate

## COLORADO JURY INSTRUCTIONS—CRIMINAL

or foreign commerce when their transportation is not prohibited. Such activities may be conducted only by persons who have registered with the United States government pursuant to the provisions of chapter 24 of Title XV of the United States Code, as amended.

However, the Committee has not drafted model affirmative defense instructions.

10:04

### Gambling Device (Prohibited Acts)

The elements of the crime of gambling device (prohibited acts) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
- [3. openly displayed a gambling device,
4. to someone other than a legal buyer.]
- [3. sold a gambling device for use in Colorado regardless of where it was purchased.]
- [3. manufactured, remanufactured, or stored for purposes of manufacture, remanufacture, and transportation,
4. a gambling device,
5. in violation of [insert a description of the “applicable state or federal law”].]
- [. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gambling device (prohibited acts).

## GAMBLING OFFENSES

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gambling device (prohibited acts).**

### COMMENT

1. See § 18-10-105(1.5), C.R.S. 2019.

2. See Instruction F:160.3 (defining “gambling device”); Instruction F:196.55 (defining “legal buyer”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**10:05**

### Transmitting or Receiving Gambling Information

**The elements of the crime of transmitting or receiving gambling information are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
  - [4. transmitted or received gambling information by telephone, telegraph, radio, semaphore, or other means.]
  - [4. installed or maintained equipment for the transmission or receipt of gambling information.]
  - [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide the prosecution has proven each of the elements be-**



## COLORADO JURY INSTRUCTIONS—CRIMINAL

yond a reasonable doubt, you should find the defendant guilty of transmitting or receiving gambling information.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of transmitting or receiving gambling information.

### COMMENT

1. See § 18-10-106(1), C.R.S. 2019.
2. See Instruction F:160.4 (defining “gambling information”); Instruction F:195 (defining “knowingly”).
3. The term “semaphore” is not defined by statute. See *Webster’s Third New International Dictionary* 2062 (2002) (defining “semaphore” as “an apparatus for visual signaling”).

10:06

### Maintaining Gambling Premises

The elements of the crime of maintaining gambling premises are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. as an owner, lessee, agent, employee, operator, or occupant,
5. maintained, aided, or permitted the maintaining of gambling premises.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

## **SIMULATED GAMBLING DEVICES**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of maintaining gambling premises.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of maintaining gambling premises.**

### **COMMENT**

1. *See* § 18-10-107(1), C.R.S. 2019.

2. *See* Instruction F:160.5 (defining “gambling premises”); Instruction F:195 (defining “knowingly”).

## **CHAPTER 10.5**

## **SIMULATED GAMBLING DEVICES**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2016.

### **10.5:01**

#### **Unlawful Offering of a Simulated Gambling Device**

**The elements of the crime of unlawful offering of a simulated gambling device are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. offered, facilitated, contracted for, or otherwise made available to or for members of the public or members of an organization or club,**
- 4. any simulated gambling device, where**
- 5. the defendant received, directly or indirectly,**

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6. a payment or transfer of consideration in connection with an entrant's use of the simulated gambling device, admission to premises on which the simulated gambling device was located, or the purchase of any product or service associated with access to or use of the simulated gambling device,

7. regardless of whether consideration in connection with such use, admission, or purchase was monetary or nonmonetary and regardless of whether it was paid or transferred before the simulated gambling device was used by an entrant, and

8. as a consequence of, in connection with, or after the play of the simulated gambling device, an award of a prize was expressly or implicitly made to a person using the device.

[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful offering of a simulated gambling device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful offering of a simulated gambling device.

COMMENT

1. See § 18-10.5-103(1), C.R.S. 2019.

2. See Instruction F:126.5 (defining "entrant"); Instruction F:285.7 (defining "prize"); Instruction F:345.3 (defining "simulated gambling device"); see also *Black's Law Dictionary* 370 (10th ed. 2014) (defining



## OFFENSES INVOLVING DISLOYALTY

“consideration” as “[s]omething (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee”); § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Section 18-10.5-103(8), C.R.S. 2019, provides as follows: “Conducting or assisting in the conduct of gaming wagering activities and live or simulcast racing and parimutuel wagering activities otherwise authorized by Colorado law is not a violation of this section.” Additionally, section 18-10.5-103(9) provides that the statute does not limit activities related to the stock market or lawfully established sweepstakes. Moreover, section 18-10.5-103(10) provides that telecommunications providers are not liable if customers use their services to conduct prohibited games. Finally, section 18-10.5-103(11) provides that the crime does not apply to persons who ceased participating in simulated gambling activity on or before July, 1, 2018, and who provide corroborating documentation to the district attorney. However, the Committee has not drafted model affirmative defense instructions.

4. The Committee has included the seventh element because its language appears in the statute. The Committee notes, however, that this “monetary or nonmonetary” language—as well as the language stating that it is irrelevant whether consideration was paid before an entrant used the device—is arguably superfluous, as the prosecution will never need to introduce evidence to prove this element. Rather, this language presumably clarifies that receiving nonmonetary consideration does not constitute a defense, nor does the timing of receipt of the consideration.

5. In 2018, pursuant to a legislative amendment, the Committee modified this instruction, added the cross-reference to Instruction F:126.5 in Comment 2, added the fourth sentence to Comment 3, and added Comment 4. *See* Ch. 381, sec. 4, § 18-10.5-103(1)(a), 2018 Colo. Sess. Laws 2297, 2300 to 01.

## CHAPTER 11

## OFFENSES INVOLVING DISLOYALTY

### CHAPTER COMMENTS

1. The Committee added this chapter in 2016.

**11:01**

### Treason

**The elements of the crime of treason are:**

## COLORADO JURY INSTRUCTIONS—CRIMINAL

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. levied war against the state of Colorado or adhered to its enemies, giving them aid and comfort.
- [4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of treason.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of treason.

### COMMENT

1. See § 18-11-101(1), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

11:02.SP

### Treason—Special Instruction

No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act or upon confession in open court.

### COMMENT

1. See § 18-11-101(1), C.R.S. 2019.

## OFFENSES INVOLVING DISLOYALTY

2. In most cases, this legal principle will be a matter for the court's determination about which the jury need not be advised. However, the Committee has drafted a special instruction because there may be instances where it is necessary to advise the jurors that this rule governs their determination of whether the evidence is sufficient (e.g., to inform a jury that it cannot convict based entirely on circumstantial evidence if it rejects the testimony of all, or all but one, of the witnesses).

3. *See* Instruction G2:05 (conspiracy), Comment 7 (explaining the non-statutory origins of the definition of an "overt act" for purposes of conspiracy).

11:03

### Insurrection

**The elements of the crime of insurrection are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with the intent,
4. by force of arms to obstruct, retard, or resist the execution of any law of this state,
5. engaged, cooperated, or participated with any armed force; or with an armed force invaded any portion of this state.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of insurrection.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of insurrection.



## COLORADO JURY INSTRUCTIONS—CRIMINAL

### COMMENT

1. See § 18-11-102, C.R.S. 2019.
2. See Instruction F:185 (defining “with intent”).
3. The statute does not define the term “armed force.”

**11:04**

### **Advocating Overthrow of Government (Sedition)**

**The elements of the crime of sedition are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. either orally or by writing, printing, exhibiting, or circulating written or printed words or pictures, or otherwise,
4. advocated, taught, incited, proposed, aided, abetted, encouraged, or advised resistance by physical force to, or the destruction or overthrow by physical force of, constituted government in general, or of the government or laws of the United States, or of this state,
5. under circumstances constituting a clear and present danger that violent action would result therefrom.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of sedition.

After considering all the evidence, if you decide

## OFFENSES INVOLVING DISLOYALTY

**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sedition.**

### COMMENT

1. *See* § 18-11-201(1), C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The term “clear and present danger” is not defined by statute. The Committee notes that, in other contexts, the requirement of a “clear and present danger” implicates constitutional considerations. *See In re Jameson*, 340 P.2d 423, 428 (Colo. 1959) (noting, in the context of a newspaper’s First Amendment challenge to a contempt citation, that “[w]hat finally emerges from the ‘clear and present danger’ cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished as a constructive contempt”).

11:05

### Inciting Destruction of Life or Property

**The elements of the crime of inciting destruction of life or property are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. either orally or by writing, printing, exhibiting, or circulating written or printed words or pictures,
4. advocated, taught, incited, proposed, aided, abetted, encouraged, or advised the unlawful injury or destruction of private or public property by the use of physical force, violence, or bodily injury, or the unlawful injury by the use of

## COLORADO JURY INSTRUCTIONS—CRIMINAL

physical force or violence of any person, or the unlawful taking of human life, as a policy or course of conduct,

5. under circumstances constituting a clear and present danger that violent action would result therefrom.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of inciting destruction of life or property.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inciting destruction of life or property.

### COMMENT

1. See § 18-11-202, C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The term “clear and present danger” is not defined by statute. The Committee notes that, in other contexts, the requirement of a “clear and present danger” implicates constitutional considerations. See *In re Jameson*, 340 P.2d 423, 428 (Colo. 1959) (noting, in the context of a newspaper’s First Amendment challenge to a contempt citation, that “[w]hat finally emerges from the ‘clear and present danger’ cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished as a constructive contempt”).



## OFFENSES INVOLVING DISLOYALTY

11:06

### Membership in an Anarchistic and Seditious Association

The elements of the crime of membership in an anarchistic and seditious association are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. acted or professed to act as an officer of any anarchistic and seditious association, or spoke, wrote, or published as a representative or professed representative of any such association, or, knowing the purpose, teachings, and doctrine of such association, became or continued to be a member thereof or contributed dues, money, or other things of value to it or to anyone for it.
- [4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of membership in an anarchistic and seditious association.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of membership in an anarchistic and seditious association.

### COMMENT

1. See § 18-11-203(2), C.R.S. 2019.

2. See Instruction F:16.5 (defining “anarchistic and seditious association”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable

## **COLORADO JURY INSTRUCTIONS—CRIMINAL**

mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**11:07**

### **Mutilation or Contempt of Flag**

**The elements of the crime of mutilation or contempt of flag are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- [3. with intent to outrage the sensibilities of persons liable to observe or discover the action or its results,]**
- [3. with intent to cause a breach of the peace or incitement to riot,]**
- [3. under such circumstances that it might cause a breach of the peace or incitement to riot,]**
- 4. mutilated, defaced, defiled, trampled upon, burned, cut, or tore any flag in public.**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of mutilation or contempt of flag.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you**



## OFFENSES INVOLVING DISLOYALTY

**should find the defendant not guilty of mutilation or contempt of flag.**

### COMMENT

1. See § 18-11-204(1)(b) to (d), C.R.S. 2019.

2. See Instruction F:157.3 (defining “flag” (mutilation or contempt)); Instruction F:185 (defining “with intent”).

3. The Committee has not included model language for section 18-11-204(1)(a), C.R.S. 2019, because that provision was declared unconstitutional in *People v. Vaughan*, 514 P.2d 1318, 1323 (Colo. 1973). Although the Committee has included model language for the remaining provisions of the statute, there are indications that these provisions may be unconstitutional. See *United States v. Eichman*, 496 U.S. 310, 318–19 (1990) (striking down, as unconstitutional, the Flag Protection Act of 1989); *Texas v. Johnson*, 491 U.S. 397 (1989) (holding that the defendant’s act of burning the American flag during a protest rally was expressive conduct within the protection of the First Amendment, and that the state could not justify prosecution of the defendant based on an interest in preventing breaches of peace or to preserve the flag as a symbol of nationhood and national unity); see also *Vaughan*, 514 P.2d at 1322-23 (“It is well settled that the state has an overriding interest in prohibiting conduct or speech which incites others to unlawful conduct or provokes retaliatory actions amounting to a breach of the peace. Thus, a statute narrowly drawn to implement such compelling state interests would withstand constitutional scrutiny even though it has the effect of proscribing some limited forms of expression.” (citation omitted)); *id.* at 1323 (“Not only must a statute infringing upon expression be justified by an overriding state interest, but such a statute may be applied only where there is a clear and present danger to such interest.”).

11:08

### Unlawful Flag Display

**The elements of the crime of unlawful flag display are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. displayed any flag other than the flag of the United States of America or the state of Colorado



## COLORADO JURY INSTRUCTIONS—CRIMINAL

or any of its subdivisions, agencies, or institutions,

4. on a permanent flagstaff located on a state, county, municipal, or other public building or on its grounds within this state.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful flag display.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful flag display.

### COMMENT

1. See § 18-11-205(1), C.R.S. 2019.

2. See Instruction F:157.7 (defining “flag” (unlawful display)).

3. Section 18-11-205(4)(a), C.R.S. 2019, establishes a variety of exceptions for the display of flags that are ceremonial, educational, commemorative, etc. Section 18-11-205(4)(b) states that such exceptions shall qualify as affirmative defenses; however, the Committee has not drafted model affirmative defense instructions.

## CHAPTER 12-1

### OFFENSES RELATING TO FIREARMS AND WEAPONS

#### CHAPTER COMMENTS

1. Section 18-12-101(2), C.R.S. 2019, states: “It shall be an affirmative defense to any provision of this article that the act was committed by a peace officer in the lawful discharge of his duties.” See Instruction H:60 (affirmative defense of “peace officer”).

## OFFENSES RELATING TO FIREARMS AND WEAPONS

2. *See* Instruction H:59 (affirmative defense of “knife—hunting or fishing”).

**12-1:01**

### Possession of a Dangerous Weapon

The elements of the crime of possession of a dangerous weapon are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. possessed a dangerous weapon.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of a dangerous weapon.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of a dangerous weapon.

### COMMENT

1. *See* § 18-12-102(3), C.R.S. 2019.

2. *See* Instruction F:86 (defining “dangerous weapon”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

3. *See* Instruction H:61 (affirmative defense based on exceptions for peace officers, members of the armed services, and licensed possession).

12-1:02

**Possession of an Illegal Weapon**

The elements of the crime of possession of an illegal weapon are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. possessed an illegal weapon.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of an illegal weapon.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of an illegal weapon.

**COMMENT**

1. See § 18-12-102(4), C.R.S. 2019.
2. See Instruction F:176 (defining "illegal weapon"); Instruction F:195 (defining "knowingly"); Instruction F:281 (defining "possession").
3. See Instruction H:61 (affirmative defense based on exceptions for peace officers, members of the armed services, and licensed possession).



## OFFENSES RELATING TO FIREARMS AND WEAPONS

12-1:03

### Possession of a Defaced Firearm

The elements of the crime of possession of a defaced firearm are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unlawfully,
4. possessed a firearm,
5. the manufacturer's serial number of which, or other distinguishing number or identification mark, had been removed, defaced, altered, or destroyed, except by normal wear and tear.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of a defaced firearm.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of a defaced firearm.

### COMMENT

1. See § 18-12-103, C.R.S. 2019.

2. See Instruction F:154 (defining "firearm"); Instruction F:195 (defining "knowingly"); Instruction F:281 (defining "possession").

12-1:04

**Defacing a Firearm**

**The elements of the crime of defacing a firearm are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. removed, defaced, covered, altered, or destroyed,**
- 5. the manufacturer's serial number or any other distinguishing number or identification mark of a firearm.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of defacing a firearm.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of defacing a firearm.**

**COMMENT**

1. See § 18-12-104, C.R.S. 2019.

2. See Instruction F:154 (defining "firearm"); Instruction F:195 (defining "knowingly").

12-1:05

**Unlawfully Carrying a Concealed Weapon (Knife)**

The elements of the crime of unlawfully carrying a concealed weapon (knife) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unlawfully,
4. carried a knife concealed on or about his [her] person.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully carrying a concealed weapon (knife).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully carrying a concealed weapon (knife).

**COMMENT**

1. See § 18-12-105(1)(a), C.R.S. 2019.

2. See Instruction F:194 (defining “knife”); Instruction F:195 (defining “knowingly”); see also *People in the Interest of R.J.A.*, 556 P.2d 491 (Colo. App. 1976) (holding, in the context of a probation revocation proceeding not subject to standard of proof beyond a reasonable doubt, that a pistol tucked under the edge of the seat on which the juvenile was sitting, within his easy reach, was “concealed on or about his person” because it was sufficiently close to be readily accessible for immediate use).



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3. See Instruction H:62 (affirmative defenses based on exceptions for permissible locations or possession of a valid permit).

4. + See *People in Interest of L.C.*, 2017 COA 82, ¶¶ 13, 26, — P.3d — (recognizing that the defendant’s act of carrying a concealed knife in his backpack was unlawful because “he was doing so in violation of a court order”; noting that, “by its plain meaning, ‘about’ necessarily enlarges the area in which a weapon may be concealed, encompassing a space close to, even if not directly on, the person”).

5. In 2016, the Committee split this instruction into two separate instructions: one for carrying a concealed knife, the other for carrying a concealed firearm. See Instruction 12-1:05.5, Comment 4.

6. + In 2019, the Committee added Comment 4.

### 12-1:05.5

#### **Unlawfully Carrying a Concealed Weapon (Firearm)**

**The elements of the crime of unlawfully carrying a concealed weapon (firearm) are:**

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly and unlawfully,
  4. carried a firearm concealed on or about his [her] person.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully carrying a concealed weapon (firearm).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**

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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully carrying a concealed weapon (firearm).**

### COMMENT

1. See § 18-12-105(1)(b), C.R.S. 2019.

2. See Instruction F:154 (defining “firearm”); Instruction F:195 (defining “knowingly”); *see also* People in the Interest of O.R., 220 P.3d 949, 952 (Colo. App. 2008) (“‘concealed’ for purposes of section 18-12-105(1)(b) means placed out of sight so as not to be discernible or apparent by ordinary observation”); People in the Interest of R.J.A., 556 P.2d 491 (Colo. App. 1976) (holding, in the context of a probation revocation proceeding not subject to standard of proof beyond a reasonable doubt, that a pistol tucked under the edge of the seat on which the juvenile was sitting, within his easy reach, was “concealed on or about his person” because it was sufficiently close to be readily accessible for immediate use).

3. See Instruction H:62 (affirmative defenses based on exceptions for permissible locations or possession of a valid permit).

4. The Committee added this instruction in 2016. See Instruction 12-1:05, Comment 4.

### 12-1:06

#### Unlawful Possession of a Weapon (General Assembly)

**The elements of the crime of unlawful possession of a weapon (general assembly) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. without legal authority,
4. carried, brought, or had in his [her] possession,
5. a firearm, or any explosive, incendiary, or other dangerous device,
6. on the property of or within any building in

which the chambers, galleries, or offices of the general assembly, or either house thereof, were located, or in which a legislative hearing or meeting was being or was to be conducted, or in which the official office of any member, officer, or employee of the general assembly was located.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful possession of a weapon (general assembly).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful possession of a weapon (general assembly).

#### COMMENT

1. See § 18-12-105(1)(c), C.R.S. 2019.
2. See Instruction F:154 (defining "firearm"); Instruction F:281 (defining "possession").
3. See Instruction H:62 (affirmative defenses based on exceptions for permissible locations or possession of a valid permit).

#### 12-1:07

### Unlawful Possession of a Weapon On School, College, or University Grounds

The elements of the crime of unlawful possession of a weapon on school, college, or university grounds are:

1. That the defendant,



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2. in the State of Colorado, at or about the date and place charged,
3. knowingly and unlawfully,
4. and without legal authority,
5. carried, brought, or had in his [her] possession,
6. a deadly weapon,
7. in or on the real estate and all improvements erected thereon of any public or private elementary, middle, junior high, high, or vocational school or any public or private college, university, or seminary,
8. other than for the purpose of presenting an authorized public demonstration or exhibition pursuant to instruction in conjunction with an organized school or class, or for the purpose of carrying out the necessary duties and functions of an employee of an educational institution that required the use of a deadly weapon, or for the purpose of participation in an authorized extra-curricular activity or on an athletic team.

[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful possession of a weapon on school, college, or university grounds.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful pos-

**session of a weapon on school, college, or university grounds.**

**COMMENT**

1. See § 18-12-105.5(1), C.R.S. 2019.
2. See Instruction F:88 (defining “deadly weapon”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).
3. See Instruction H:63 (affirmative defenses based on exceptions for permissible locations and purposes, or possession of a valid permit).

**12-1:08**

**Prohibited Use of a Weapon (Aiming)**

**The elements of the crime of prohibited use of a weapon (aiming) are:**

1. **That the defendant,**
2. **in the State of Colorado, at or about the date and place charged,**
3. **knowingly and unlawfully,**
4. **aimed a firearm at another person.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited use of a weapon (aiming).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited use of a weapon (aiming).**

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### COMMENT

1. *See* § 18-12-106(1)(a), C.R.S. 2019.

2. *See* Instruction F:154 (defining “firearm”); Instruction F:195 (defining “knowingly”).

**12-1:09**

### **Prohibited Use of a Weapon (Discharging or Shooting)**

**The elements of the crime of prohibited use of a weapon (discharging or shooting) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. recklessly or with criminal negligence,**
- 4. discharged a firearm or shot a bow and arrow.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited use of a weapon (discharging or shooting).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited use of a weapon (discharging or shooting).**

### COMMENT

1. *See* § 18-12-106(1)(b), C.R.S. 2019.

2. *See* Instruction F:79 (defining “criminal negligence”); Instruction F:154 (defining “firearm”); Instruction F:308 (defining “recklessly”).



12-1:10

**Prohibited Use of a Weapon (Unattended)**

The elements of the crime of prohibited use of a weapon (unattended) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. set a loaded gun, trap, or device designed to cause an explosion upon being tripped or approached, and
  5. left it unattended by a competent person immediately present.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited use of a weapon (unattended).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited use of a weapon (unattended).

**COMMENT**

1. See § 18-12-106(1)(c), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).

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### 12-1:11

#### Prohibited Use of a Weapon (Under the Influence)

The elements of the crime of prohibited use of a weapon (under the influence) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. had a firearm in his [her] possession,
4. while he [she] was under the influence of intoxicating liquor or of a controlled substance.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited use of a weapon (under the influence).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited use of a weapon (under the influence).

#### COMMENT

1. See § 18-12-106(1)(d), C.R.S. 2019.

2. See Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:154 (defining “firearm”); Instruction F:281 (defining “possession”).

3. See *People v. Beckett*, 782 P.2d 812, 813 (Colo. App. 1989) (holding that “the failure to define ‘under the influence,’ if error, was harmless”).

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4. + *See People v. Koper*, 2018 COA 137, ¶¶ 54, \_\_ P.3d \_\_ (holding that, where the defendant was charged with possessing a firearm while under the influence and requested an instruction tracking the statutory presumptions and inferences regarding driving under the influence, the trial court properly rejected the instruction because the presumptions and inferences are not incorporated into the possession statute).

5. In 2015, the Committee added Comment 3.

6. + In 2019, the Committee added Comment 4.

### 12-1:12

#### **Prohibited Use of a Weapon (Throwing Star or Nunchaku)**

**The elements of the crime of prohibited use of a weapon (throwing star or nunchaku) are:**

1. That the defendant,  
2. in the State of Colorado, at or about the date and place charged,

3. knowingly,

[4. aimed, swung, or threw,

5. a throwing star or nunchaku,

6. at another person.]

[4. possessed a throwing star or nunchaku,

5. in a public place,

6. other than for the purpose of presenting an authorized public demonstration or exhibition or pursuant to instruction in conjunction with an organized school or class.]

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**



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**the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited use of a weapon (throwing star or nunchaku).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited use of a weapon (throwing star or nunchaku).**

### COMMENT

1. See § 18-12-106(1)(e), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:244 (defining “nunchaku”); Instruction F:281 (defining “possession”); Instruction F:372 (defining “throwing star”).
3. In a case involving transportation of throwing stars or nunchaku, draft a special instruction explaining the following limitation: “When transporting throwing stars or nunchaku for a public demonstration or exhibition or for a school or class, they shall be transported in a closed, nonaccessible container.” § 18-12-106(1)(e), C.R.S. 2019.

### 12-1:13.SP

#### **Prohibited Use of Weapons—Special Instruction (Possession of a Permit Is Not a Defense)**

**Possession of a concealed weapon permit, handgun permit, or temporary emergency concealed handgun permit is no defense to a charge of prohibited use of a weapon.**

### COMMENT

1. See § 18-12-106(1)(d), C.R.S. 2019.
2. Although this limitation is set forth as part of the subsection criminalizing possession of a firearm while under the influence of an intoxicating liquor or a controlled substance, see § 18-12-106(1)(d), it is, by its terms, applicable to any “violation of this subsection (1).” Accordingly, the Committee has placed this special instruction after the last instruction that defines an offense in violation of section 18-12-106(1).

12-1:14

**Prohibited Use of a Stun Gun**

**The elements of the crime of prohibited use of a stun gun are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly and unlawfully,**
- 4. used a stun gun in the commission of the crime of [insert name(s) of offense(s)].**
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited use of a stun gun.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited use of a stun gun.**

**COMMENT**

1. See § 18-12-106.5, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:354 (defining “stun gun”).

3. If the defendant is not separately charged with a referenced offense, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide

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the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

**12-1:15**

### **Illegal Discharge of a Firearm**

**The elements of the crime of illegal discharge of a firearm are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly or recklessly,**
- 4. discharged a firearm into any dwelling or any other building or occupied structure, or into any motor vehicle occupied by any person.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of illegal discharge of a firearm.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of illegal discharge of a firearm.**

#### **COMMENT**

1. *See* § 18-12-107.5, C.R.S. 2019.

2. *See* Instruction F:114 (defining “dwelling”); Instruction F:154 (defining “firearm”); Instruction F:195 (defining “knowingly”); Instruction F:236 (defining “motor vehicle”); Instruction F:308 (defining “recklessly”); *see also* Instruction F:40 (defining “building” for purposes of



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Article 4 offenses); Instruction F:248 (defining “occupied structure” for purposes of Article 4 offenses).

3. Section 18-12-107.5(2) provides “[i]t shall not be an offense under this section if the person who discharges a firearm in violation of subsection (1) of this section is a peace officer . . . acting within the scope of such officer’s authority and in the performance of such officer’s duties.” This language is slightly different from the language in section 18-12-101(2), C.R.S. 2019 (“It shall be an affirmative defense to any provision of this article that the act was committed by a peace officer in the lawful discharge of his duties.”). Accordingly, it may be appropriate to modify Instruction H:60 (affirmative defense of “peace officer”), which, as noted in an introductory comment to this chapter, is based on section 18-12-101(2).

### **12-1:16**

#### **Possession of a Weapon by a Previous Offender**

**The elements of the crime of possession of a weapon by a previous offender are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- [3. subsequent to being convicted of [insert the name(s) of the qualifying felony offense(s)],]**
- [3. subsequent to being convicted of attempt or conspiracy to commit [insert the name(s) of the qualifying felony offense(s)],]**
- [3. subsequent to being adjudicated for [insert the name(s) of the qualifying act(s)],]**
- [3. subsequent to being adjudicated for attempt or conspiracy to commit [insert the name(s) of the qualifying felony offense(s)],]**
- 4. knowingly,**
- 5. possessed, used, or carried upon his [her] person a [firearm] [insert name(s) of “any other**

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weapon that is subject to the provisions of this article”].

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of a weapon by a previous offender.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of a weapon by a previous offender.

### COMMENT

1. See § 18-12-108(1), (3), C.R.S. 2019.

2. See Instruction F:154 (defining “firearm”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

3. See *People v. DeWitt*, 275 P.3d 728, 735 (Colo. App. 2011) (“We conclude that the plain language of the amended POWPO statute evinces the General Assembly’s clear intent for the ‘knowingly’ mental state to apply only to the possession element of the offense, and not to the prior felony conviction element.”).

4. See Instruction H:64 (affirmative defense of “possession of a weapon by a previous offender—choice of evils”).

### 12-1:17.INT

#### Possession of a Weapon by a Previous Offender— Interrogatory (Dangerous Weapon)

If you find the defendant not guilty of possession of a weapon by a previous offender, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of pos-

session of a weapon by a previous offender, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant possess a dangerous weapon?  
(Answer “Yes” or “No”)**

**The defendant possessed a dangerous weapon only if:**

1. he [she] possessed a firearm silencer, machine gun, short shotgun, short rifle, or ballistic knife.

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

#### COMMENT

1. See § 18-12-108(2)(b), (4)(b), C.R.S. 2019.

2. See Instruction F:29 (defining “ballistic knife”); Instruction F:86 (defining “dangerous weapon”); Instruction F:154 (defining “firearm”); Instruction F:156 (defining “firearm silencer”); Instruction F:203 (defining “machine gun”); Instruction F:345 (defining “short shotgun”); Instruction F:344 (defining “short rifle”); see, e.g., Instruction E:28 (special verdict form).



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### 12-1:18.INT

#### **Possession of a Weapon by a Previous Offender— Interrogatory (Previous Conviction for Burglary, Arson, or Any Felony Involving the Use of Force or a Deadly Weapon)**

If you find the defendant not guilty of possession of a weapon by a previous offender, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of possession of a weapon by a previous offender, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Was the defendant previously convicted of [burglary] [arson] [an offense involving the use of [force] [a deadly weapon]]? (Answer “Yes” or “No”)**

**The defendant was previously convicted of [burglary] [arson] [an offense involving the use of [force] [a deadly weapon]] only if:**

**1. the defendant’s previous [conviction] [adjudication] was for [burglary] [arson] [[insert name of other felony offense(s) for which the defendant was convicted or adjudicated delinquent] involving the use of force or a deadly weapon], and**

**2. the date on which the defendant committed the possession of a weapon by a previous offender occurred within ten years after the date of conviction, if the defendant was not incarcerated; or within ten years after the date the defendant was released from confinement, if the defendant was incarcerated; or, within ten years after the date of release from supervision, if the defendant was subject to supervision imposed as a result of conviction.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

#### COMMENT

1. See § 18-12-108(2)(c), (4)(c), C.R.S. 2019.
2. See, *e.g.*, Instruction E:28 (special verdict form).
3. See *People v. Blue*, 544 P.2d 385, 387 (Colo. 1975) (the words “involving” and “use of force or violence” are comprehensible and readily understood).
4. Sections 18-12-108(2)(c) and 18-12-108(4)(c) apply to prior convictions for burglary or arson (or acts committed by a juvenile which would, if committed by an adult, constitute either such offense) without requiring proof that the prior conviction was one “involving the use of force or the use of a deadly weapon.” Accordingly, while it is the jury’s role to determine whether the defendant was previously convicted as alleged, it appears that, for prior convictions based on offenses other than burglary or arson, it is the trial court’s function to determine whether the prior conviction was for a felony. Further, in some cases it may not be necessary to ask the jury whether a prior conviction was one “involving the use of force or the use of a deadly weapon” because the court will be able to answer that question, as a matter of law, by examining the statutory elements of the prior offense for which the defendant was convicted. See, *e.g.*, *People v. Allaire*, 843 P.2d 38, 40 (Colo. App. 1992) (it was not error for the trial court to instruct the jury that second degree assault involves force or violence as a matter of law; all of the relevant means by which second degree assault, as a class four felony, can be committed involve the use of force); see also *People v. Gallegos*, 563 P.2d 937, 938 (Colo. 1977) (holding, under the previous version of the POWPO statute, that attempted robbery by threat is a felony involving the use of force).
5. It may be necessary to draft supplemental instructions to help



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guide the jury's determination of the date that the defendant was "convicted" or "released." *See generally* People v. Larson, 782 P.2d 840, 843 (Colo. App. 1989) (trial court erred by failing to instruct the jury that, in order for defendant to be found guilty of possession of a weapon by a previous offender, he must have possessed a firearm within ten years after his discharge from incarceration; however, no plain error because the issue was not contested at trial).

12-1:19

### Possession of a Handgun by a Juvenile

The elements of the [crime] [offense] of possession of a handgun by a juvenile are:

1. That the [defendant] [juvenile],
2. in the State of Colorado, at or about the date and place charged,
3. had not attained the age of eighteen years, and
4. knowingly,
5. possessed a handgun.
- [6. and that the [defendant's] [juvenile's] conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find [the defendant guilty] [that the juvenile committed the offense] of possession of a handgun by a juvenile.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find [the defendant not guilty] [that the juvenile did not commit the offense] of possession of a handgun by a juvenile.



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### COMMENT

1. *See* § 18-12-108.5(1)(a), C.R.S. 2019.

2. *See* Instruction F:167 (defining “handgun”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

3. *See* Instruction H:65 (affirmative defense of “permissible purpose”).

4. The Committee recognizes that juveniles are not entitled to a trial by jury for misdemeanors or petty offenses. *See* § 19-2-107(2), C.R.S. 2019. Nevertheless, the Committee has created this instruction in the event that a juvenile would ever face a jury trial, either in criminal court or in juvenile court. Furthermore, the Committee has provided bracketed language throughout the instruction to match the appropriate venue. If the proceeding takes places in criminal court, the court should use the first set of brackets. If the proceeding takes place in juvenile court, the court should use the second set of brackets, which replaces several terms (i.e., “crime,” “defendant,” “guilty”) with their appropriate counterpart (i.e., “offense,” “juvenile,” “committed the offense”).

5. In 2017, the Committee added the bracketed alternatives to this instruction, for the reasons described in Comment 4.

### 12-1:20

#### **Unlawfully Providing a Handgun to a Juvenile (Prohibited Possession)**

**The elements of the crime of providing a handgun to a juvenile (prohibited possession) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. intentionally, knowingly, or recklessly,**
- 4. provided a handgun,**
- 5. with or without remuneration,**
- 6. to any person under the age of eighteen years,**

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**7. in violation of the statute that prohibits possession of a handgun by a juvenile.**

**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of providing a handgun to a juvenile (prohibited possession).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of providing a handgun to a juvenile (prohibited possession).**

### COMMENT

1. See § 18-12-108.7(1)(a), C.R.S. 2019.

2. See Instruction F:167 (defining “handgun”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:308 (defining “recklessly”); Instruction F:310 (defining “remuneration”).

3. Because section 18-12-108.7(1)(a) requires proof that the juvenile’s possession violated section 18-12-108.5, an adult charged with violating section 18-12-108.7(1)(a) may be entitled to an instruction explaining the affirmative defense that applies to section 18-12-108.5. See Instruction H:65 (affirmative defense of “permissible purpose”).

4. See Instruction H:66 (affirmative defense of “physical harm from attempt to disarm”).

5. If the defendant is not charged with possession of a handgun by a juvenile, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. See Instruction 12-1:19 (possession of a handgun by a juvenile). Place the elemental instruction immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for possession of a handgun by a juvenile.

12-1:21

**Unlawfully Permitting a Juvenile to Possess a Handgun  
(Prohibited Possession)**

The elements of the crime of permitting a juvenile to possess a handgun (prohibited possession) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knew of a juvenile's conduct which violated the statute that prohibits possession of a handgun by a juvenile, and
4. failed to make reasonable efforts to prevent such violation.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of permitting a juvenile to possess a handgun (prohibited possession).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of permitting a juvenile to possess a handgun (prohibited possession).

**COMMENT**

1. See § 18-12-108.7(1)(a), C.R.S. 2019.
2. See Instruction F:167 (defining "handgun"); Instruction F:193 (defining "juvenile").
3. Because section 18-12-108.7(1)(a) requires proof that the juve-



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nile's possession violated section 18-12-108.5, an adult charged with violating section 18-12-108.7(1)(a) may be entitled to an instruction explaining the affirmative defense that applies to section 18-12-108.5. See Instruction H:65 (affirmative defense of "permissible purpose").

4. See Instruction H:66 (affirmative defense of "physical harm from attempt to disarm").

5. If the defendant is not charged with possession of a handgun by a juvenile, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. See Instruction 12-1:19 (possession of a handgun by a juvenile). Place the elemental instruction immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for possession of a handgun by a juvenile.

### 12-1:22

#### **Unlawfully Providing a Handgun to a Juvenile or Permitting a Juvenile to Possess a Handgun (Substantial Risk)**

**The elements of the crime of unlawfully providing a handgun to a juvenile or permitting a juvenile to possess a handgun (substantial risk) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. intentionally, knowingly, or recklessly,**
- 4. provided a handgun to a juvenile or permitted a juvenile to possess a handgun,**
- 5. even though the defendant was aware of a substantial risk that the juvenile would use a handgun to commit [insert name(s) of felony offense(s)].**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully providing a handgun to a juvenile or permitting a juvenile to possess a handgun (substantial risk).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully providing a handgun to a juvenile or permitting a juvenile to possess a handgun (substantial risk).

### COMMENT

1. See § 18-12-108.7(2)(a), C.R.S. 2019.

2. See Instruction F:167 (defining “handgun”); Instruction F:185 (defining “intentionally”); Instruction F:193 (defining “juvenile”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”); Instruction F:308 (defining “recklessly”).

3. See Instruction H:66 (affirmative defense of “physical harm from attempt to disarm”).

4. In 2016, the Committee eliminated the bracketing from the instruction’s opening paragraph.

### 12-1:23

#### Unlawfully Permitting a Juvenile to Possess a Handgun (Failure to Act Based On a Substantial Risk)

The elements of the crime of unlawfully permitting a juvenile to possess a handgun (failure to act based on a substantial risk) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was aware of a substantial risk that a juvenile would use a handgun to commit [insert name(s) of felony offense(s)], and



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4. failed to make reasonable efforts to prevent the commission of the offense.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully permitting a juvenile to possess a handgun (failure to act based on a substantial risk).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully permitting a juvenile to possess a handgun (failure to act based on a substantial risk).

### COMMENT

1. See § 18-12-108.7(2)(a), C.R.S. 2019.

2. See Instruction F:167 (defining “handgun”); Instruction F:193 (defining “juvenile”).

3. Section 18-12-108.7(2)(a) provides as follows:

A person shall be deemed to have violated this paragraph (a) if such person provides a handgun to or permits the possession of a handgun by any juvenile who has been convicted of a crime of violence, as defined in section 18-1.3-406, or any juvenile who has been adjudicated a juvenile delinquent for an offense which would constitute a crime of violence, as defined in section 18-1.3-406, if such juvenile were an adult.

This provision could be interpreted as establishing either: (1) a permissible inference that should be explained to the jury by means of a special instruction, *see generally* Jolly v. People, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process); or (2) a substantive offense with an imputed mens rea of “knowingly.” See § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be



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required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”). The Committee takes no position concerning which interpretation is correct.

4. See Instruction H:66 (affirmative defense of “physical harm from attempt to disarm”).

### **12-1:24**

#### **Unlawfully Permitting a Juvenile to Possess a Firearm Other Than a Handgun**

The elements of the crime of unlawfully permitting a juvenile to possess a firearm other than a handgun are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. sold, rented, transferred ownership of, or allowed unsupervised possession of,
4. a firearm other than a handgun,
5. with or without remuneration,
6. to any juvenile,
7. without the consent of the juvenile’s parent or legal guardian.

[8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully permitting a juvenile to possess a firearm other than a handgun.

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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully permitting a juvenile to possess a firearm other than a handgun.

### COMMENT

1. See § 18-12-108.7(3), C.R.S. 2019.

2. See Instruction F:154 (defining “firearm”); Instruction F:167 (defining “handgun”); Instruction F:193 (defining “juvenile”); Instruction F:281 (defining “possession”); Instruction F:310 (defining “remuneration”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:66 (affirmative defense of “physical harm from attempt to disarm”).

### 12-1:25

#### Possession or Control of an Explosive or Incendiary Device

The elements of the crime of possession or control of an explosive or incendiary device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. possessed, controlled, manufactured, gave, mailed, sent, or caused to be sent,
5. an explosive or incendiary device.

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession or control of an explosive or incendiary device.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession or control of an explosive or incendiary device.**

**COMMENT**

1. *See* § 18-12-109(2), C.R.S. 2019.

2. *See* Instruction F:134 (defining “explosive or incendiary device”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

3. Section 18-12-109(3), C.R.S. 2019, enumerates several exemptions from criminal liability (e.g., peace officers, National Guard servicepersons, etc.). However, the Committee has not drafted model affirmative defense instructions.

**12-1:26**

**Possession or Control of a Chemical, Biological, or Radiological Weapon**

**The elements of the crime of possession or control of a chemical, biological, or radiological weapon are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. possessed, controlled, manufactured, gave, mailed, sent, or caused to be sent,**



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**5. a chemical, biological, or radiological weapon.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of a chemical, biological, or radiological weapon.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of a chemical, biological, or radiological weapon.**

### COMMENT

1. See § 18-12-109(2.5), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

3. The terms “chemical, biological, or radiological weapon” are not defined by statute.

### 12-1:27

**Use of an Explosive or Incendiary Device or a Chemical, Biological, or Radiological Weapon in the Commission, or Attempted Commission, of a Felony**

**The elements of the crime of use of a[n] [explosive or incendiary device] [chemical, biological, or radiological weapon or materials] in the [attempted] commission of a felony are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**

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4. used, caused to be used, or gave, mailed, sent, or caused to be sent,

5. a[n] [explosive or incendiary device] [chemical, biological, or radiological weapon or materials],

6. in [the commission of, or in an attempt to commit, [insert name of felony offense(s)]].

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of use of a[n] [explosive or incendiary device] [chemical, biological, or radiological weapon or materials] in the [attempted] commission of a felony.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of use of a[n] [explosive or incendiary device] [chemical, biological, or radiological weapon or materials] in the [attempted] commission of a felony.

COMMENT

1. See § 18-12-109(4), C.R.S. 2019.

2. See Instruction F:134 (defining “explosive or incendiary device”); Instruction F:195 (defining “knowingly”); Instruction G2:01 (criminal attempt).

3. The terms “chemical, biological, or radiological weapon” are not defined by statute.

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12-1:28

### Removal of an Explosive or Incendiary Device

The elements of the crime of removal of an explosive or incendiary device are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. removed or caused to be removed, or carried away,
  4. any explosive or incendiary device,
  5. from the premises where the explosive or incendiary device was kept by the lawful user, vendor, transporter, or manufacturer thereof,
  6. without the consent or direction of the lawful possessor.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of removal of an explosive or incendiary device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of removal of an explosive or incendiary device.

#### COMMENT

1. See § 18-12-109(5), C.R.S. 2019.



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2. See Instruction F:134 (defining “explosive or incendiary device”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

12-1:29

### Removal of a Chemical, Biological, or Radiological Weapon

The elements of the crime of removal of a chemical, biological, or radiological weapon are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. removed or caused to be removed, or carried away,
  4. a chemical, biological, or radiological weapon,
  5. from the premises where the chemical, biological, or radiological weapon was kept by the lawful user, vendor, transporter, or manufacturers thereof,
  6. without the consent or direction of the lawful possessor.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of removal of a chemical, biological, or radiological weapon.

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of removal of a chemical, biological, or radiological weapon.**

### COMMENT

1. *See* § 18-12-109(5.5), C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The terms “chemical, biological, or radiological weapon” are not defined by statute.

**12-1:30**

### Possession of Explosive or Incendiary Parts

**The elements of the crime of possession of explosive or incendiary parts are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. possessed any explosive or incendiary parts.**
- [4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of explosive or incendiary parts.**

**After considering all the evidence, if you decide**

**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of explosive or incendiary parts.**

**COMMENT**

1. *See* § 18-12-109(6), C.R.S. 2019.

2. *See* Instruction F:135 (defining “explosive or incendiary parts”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**12-1:31**

**Possession of Chemical, Biological, or Radiological  
Weapon Parts**

**The elements of the crime of possession of chemical, biological, or radiological weapon parts are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. possessed any chemical, biological, or radiological weapon parts.**

**[4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of chemical, biological, or radiological weapon parts.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**



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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of chemical, biological, or radiological weapon parts.**

### COMMENT

1. *See* § 18-12-109(7), C.R.S. 2019.

2. *See* Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The terms “chemical, biological, or radiological weapon” are not defined by statute.

### 12-1:32

#### **False, Facsimile, or Hoax Device or Weapon**

**The elements of the crime of false, facsimile, or hoax device or weapon are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- [3. manufactured, possessed, gave, mailed, sent, or caused to be sent,**
- 4. any false, facsimile or hoax [explosive or incendiary device] [chemical, biological, or radiological weapon],**
- 5. to another person.]**
- [3. placed any false, facsimile or hoax [explosive or incendiary device] [chemical, biological, or radiological weapon],**
- 4. in or upon any real or personal property.]**
- [. and that the defendant’s conduct was not**

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legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false, facsimile, or hoax device or weapon.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false, facsimile, or hoax device or weapon.

### COMMENT

1. See § 18-12-109(7), C.R.S. 2019.

2. See Instruction F:134 (defining “explosive or incendiary device”); Instruction F:281 (defining “possession”).

3. The terms “chemical, biological, or radiological weapon” are not defined by statute.

### 12-1:33

#### Unlawfully Dispensing, Distributing, or Selling an Explosive or Incendiary Devices

The elements of the crime unlawfully dispensing, distributing, or selling explosive or incendiary devices are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [possessed a valid [insert description of permit issued under the provisions of article 7 of title 9, C.R.S.] [was an employee of a person who pos-

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essed a valid [insert description of permit issued under the provisions of article 7 of title 9, C.R.S.], and was acting within the scope of his [her] employment], and

5. dispensed, distributed, or sold,
6. explosive or incendiary devices,
7. to a person who was not authorized to possess or control such an explosive or incendiary device.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully dispensing, distributing, or selling explosive or incendiary devices.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully dispensing, distributing, or selling explosive or incendiary devices.

### COMMENT

1. See § 18-12-109(8), C.R.S. 2019.

2. See Instruction F:134 (defining "explosive or incendiary device"); Instruction F:281 (defining "possession").

### 12-1:34

#### **Purchasing or Obtaining a Firearm for a Person Who Is Ineligible**

The elements of the crime of purchasing or obtaining a firearm for a person who is ineligible are:

1. That the defendant,



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2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. purchased or otherwise obtained a firearm,
  5. on behalf of, or for transfer to, a person whom the transferor knew, or reasonably should have known, was ineligible to possess a firearm pursuant to federal or state law.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of purchasing or obtaining a firearm for a person who is ineligible.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of purchasing or obtaining a firearm for a person who is ineligible.

**COMMENT**

1. See § 18-12-111(1), C.R.S. 2019.
2. See Instruction F:154 (defining "firearm"); Instruction F:195 (defining "knowingly").
3. It may be necessary to draft a special instruction to guide the jury's determination of whether the recipient was ineligible to possess a firearm.

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12-1:35

**Failure to Display Signage Explaining That It Is Unlawful  
to Purchase or Obtain a Firearm for a Person Who Is  
Ineligible**

The elements of the crime of failure to display signage explaining that it is unlawful to purchase or obtain a firearm for a person who is ineligible are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was a licensed dealer, pursuant to [insert a description of the relevant license issued pursuant to Chapter 44 of 18 U.S.C.; see 18 U.S.C. § 921(a)(11)], and,
  4. failed to post a sign displaying that a person commits a felony if he [she] knowingly purchases or otherwise obtains a firearm on behalf of, or for transfer to, a person who the transferor knows or reasonably should know is ineligible to possess a firearm pursuant to federal or state law,
  5. in a manner that was easily readable, and
  6. in an area that was visible to the public at each location from which the defendant sold firearms to the general public.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to display signage explaining

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**that it is unlawful to purchase or obtain a firearm for a person who is ineligible.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to display signage explaining that it is unlawful to purchase or obtain a firearm for a person who is ineligible.**

**COMMENT**

1. *See* § 18-12-111(2), C.R.S. 2019.

2. *See* Instruction F:154 (defining “firearm”); Instruction F:195 (defining “knowingly”).

**12-1:36**

**Transfer of a Firearm Without a Background Check**

**The elements of the crime of transfer of a firearm without a background check are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was not a licensed gun dealer, and**
- 4. before transferring or attempting to transfer possession of a firearm to a transferee,**
- 5. failed to [require that a background check be conducted of the prospective transferee] [obtain approval of the transfer from the federal bureau of alcohol, tobacco, and firearms after a background check had been requested by a licensed gun dealer in accordance with [insert a description of the procedure, from section 24-33.5-424]].**
- [6. and that the defendant’s conduct was not**



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legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of transfer of a firearm without a background check.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of transfer of a firearm without a background check.

### COMMENT

1. See § 18-12-112(1)(a), (9)(a), C.R.S. 2019.

2. See Instruction F:154 (defining “firearm”); Instruction F:196.65 (defining “licensed gun dealer”); Instruction F:375 (defining “transferee”).

3. See Instruction H:67 (affirmative defense of “permissible transfer”).

4. In the absence of case law on point, the Committee takes no position on whether the word “attempting” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

5. In 2015, the Committee added Comment 4.

6. In 2018, the Committee added the cross-reference to Instruction F:196.65 in Comment 2 pursuant to a legislative amendment. See Ch. 8, sec. 6, § 18-12-112(1)(a), 2018 Colo. Sess. Laws 145, 153.

### 12-1:37

#### **Noncompliance by a Licensed Gun Dealer Performing a Background Check for a Prospective Firearm Transferor Who Is Not a Licensed Gun Dealer**

**The elements of the crime of noncompliance by a**

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**licensed gun dealer performing a background check for a prospective firearm transferor who is not a licensed gun dealer are:**

- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. was a licensed gun dealer, and**
  - 4. obtained a background check on a prospective transferee, for a prospective firearm transferor who was not a licensed gun dealer, and**
  - 5. failed to [record the transfer [insert a description of the recording requirement from section 18-12-402] and retain the records [insert a description of the retention requirement from section 18-12-403] in the same manner as when conducting a sale, rental, or exchange at retail] [comply with [insert a description of the relevant state or federal laws, including 18 U.S.C. § 922] as if he [she] were transferring the firearm from his [her] inventory to the prospective transferee].**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of noncompliance by a licensed gun dealer performing a background check for a prospective firearm transferor who is not a licensed gun dealer.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of noncompliance by a licensed gun dealer performing a back-**



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**ground check for a prospective firearm transferor who is not a licensed gun dealer.**

### COMMENT

1. See § 18-12-112(2)(b), (9)(a), C.R.S. 2019.
2. See Instruction F:154 (defining “firearm”); Instruction F:196.65 (defining “licensed gun dealer”); Instruction F:375 (defining “transferee”).
3. See Instruction H:67 (affirmative defense of “permissible transfer”).
4. For further details on the recording and retention requirements, see Instruction 12-4:01 (improper firearms record (failure to keep record)).
5. In 2018, pursuant to a legislative amendment, the Committee modified the statutory citations in the fifth element, added the cross-reference to Instruction F:196.65 in Comment 2, and added Comment 4. See Ch. 8, sec. 6, § 18-12-112(2)(b), 2018 Colo. Sess. Laws 145, 153.

### 12-1:38

#### **Failure to Provide Results of Background Check**

**The elements of the crime of failure to provide results of background check are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a licensed gun dealer, and
4. obtained a background check for a prospective firearm transferor, and
5. failed to provide the firearm transferor and transferee with a copy of the results of the background check, including the federal bureau of alcohol, tobacco, and firearms’ approval or disapproval of the transfer.
- [6. and that the defendant’s conduct was not



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legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to provide results of background check.

After considering all the evidence, if you<sup>t</sup> decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to provide results of background check.

### COMMENT

1. See § 18-12-112(2)(c), (9)(a), C.R.S. 2019.
2. See Instruction F:154 (defining “firearm”); Instruction F:375 (defining “transferee”).
3. See Instruction H:67 (affirmative defense of “permissible transfer”).

### 12-1:39

#### Overcharging for a Background Check

The elements of the crime of overcharging for a background check are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a licensed gun dealer, and
4. obtained a background check for a prospective firearm transferor, and
5. charged a fee of more than ten dollars for his [her] services.

## OFFENSES RELATING TO FIREARMS AND WEAPONS

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of overcharging for a background check.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of overcharging for a background check.**

### COMMENT

1. *See* § 18-12-112(2)(d), (9)(a), C.R.S. 2019.

2. *See* Instruction F:154 (defining “firearm”).

3. The Committee has drafted a model instruction for a violation of section 18-12-112(2)(d) because section 18-12-112(9) states, without limitation, that “[a] person who violates a provision of this section commits a class 1 misdemeanor.” However, the Committee acknowledges that section 18-12-112(4) could be construed as setting the maximum fee without also establishing a substantive offense as an enforcement mechanism.

4. *See* Instruction H:67 (affirmative defense of “permissible transfer”).

5. Section 18-12-112 does not define the term “transferor.”

### 12-1:40

## Accepting Possession of a Firearm Without Approval

**The elements of the crime of accepting possession of a firearm without approval are:**

**1. That the defendant,**

**2. in the State of Colorado, at or about the date and place charged,**

3. was a prospective firearm transferee, and
  4. accepted possession of a firearm, and
  5. the prospective firearm transferor had not obtained approval of the transfer from the federal bureau of alcohol, tobacco, and firearms' after a background check had been requested by a licensed gun dealer.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of accepting possession of a firearm without approval.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of accepting possession of a firearm without approval.

#### COMMENT

1. See § 18-12-112(3)(a), (9)(a), C.R.S. 2019.
2. See Instruction F:154 (defining "firearm"); Instruction F:375 (defining "transferee"); Instruction F:281 (defining "possession").
3. See Instruction H:67 (affirmative defense of "permissible transfer").
4. Section 18-12-112 does not define the term "transferor."

#### 12-1:41

### Providing False Information for the Purpose of Acquiring a Firearm

The elements of the crime of providing false information for the purpose of acquiring a firearm are:



## OFFENSES RELATING TO FIREARMS AND WEAPONS

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a prospective firearm transferee, and
5. provided false information to a prospective firearm transferor or to a licensed gun dealer,
6. for the purpose of acquiring a firearm.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of providing false information for the purpose of acquiring a firearm.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of providing false information for the purpose of acquiring a firearm.

### COMMENT

1. See § 18-12-112(3)(b), (9)(a), C.R.S. 2019.

2. See Instruction F:154 (defining "firearm"); Instruction F:195 (defining "knowingly"); Instruction F:375 (defining "transferee").

3. See Instruction H:67 (affirmative defense of "permissible transfer").

4. Section 18-12-112 does not define the term "transferor."

12-1:42

**Transfer After Expiration of Approval**

**The elements of the crime of transfer after expiration of approval are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a prospective firearm transferee or transferor, and**
- 4. completed a transfer of a firearm,**
- 5. more than thirty calendar days after the federal bureau of alcohol, tobacco, and firearms had approved the transfer.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of transfer after expiration of approval.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of transfer after expiration of approval.**

**COMMENT**

1. See § 18-12-112(4), (9)(a), C.R.S. 2019.
2. See Instruction F:154 (defining “firearm”); Instruction F:375 (defining “transferee”).
3. The Committee has drafted a model instruction for a violation of

## **OFFENSES RELATING TO LARGE-CAPACITY AMMUNITION MAGAZINES**

section 18-12-112(4) because section 18-12-112(9) states, without limitation, that “[a] person who violates a provision of this section commits a class 1 misdemeanor.” Moreover, it does not appear that a transfer of a firearm after an approval has expired can be prosecuted under any other provision of section 18-12-112. However, the Committee acknowledges that section 18-12-112(4) could be construed as setting an expiration period without also establishing a substantive offense as an enforcement mechanism.

4. See Instruction H:67 (affirmative defense of “permissible transfer”).

5. Section 18-12-112 does not define the term “transferor.”

### **CHAPTER 12-3**

## **OFFENSES RELATING TO LARGE-CAPACITY AMMUNITION MAGAZINES**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2016.

#### **12-3:01**

### **Unlawful Sale, Transfer, or Possession of a Large-Capacity Magazine**

**The elements of the crime of unlawful sale, transfer, or possession of a large-capacity magazine are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. sold, transferred, or possessed a large-capacity magazine.**

**[4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**



**the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful sale, transfer, or possession of a large-capacity magazine.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful sale, transfer, or possession of a large-capacity magazine.**

#### COMMENT

1. *See* § 18-12-302(1)(a), C.R.S. 2019.

2. *See* Instruction F:196.2 (defining “large-capacity magazine”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. *See* Instruction H:67.2 (affirmative defense of “lawful ownership”).

4. Section 18-12-302(3), C.R.S. 2019, presents a variety of exceptions to prosecution (e.g., licensed gun dealers). The Committee, however, has not drafted model affirmative defense instructions.

#### 12-3:02.INT

### **Unlawful Sale, Transfer, or Possession of a Large-Capacity Magazine—Interrogatory (Possession During Commission of a Felony or a Crime of Violence)**

**If you find the defendant not guilty of unlawful sale, transfer, or possession of a large-capacity magazine, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of unlawful sale, transfer, or possession of a large-capacity magazine, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:**

**OFFENSES RELATING TO LARGE-CAPACITY AMMUNITION  
MAGAZINES**

**Did the defendant possess the large-capacity magazine during commission of a specified crime?  
(Answer “Yes” or “No”)**

**The defendant possessed the large-capacity magazine during the commission of a specified crime only if:**

- 1. the defendant possessed a large-capacity magazine during the commission of [insert name(s) of felony offense(s) or crime(s) of violence], as defined in your instructions.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

**1. See § 18-12-302(1)(c), C.R.S. 2019.**

**2. See, e.g., Instruction E:28 (special verdict form).**

**3. It is not necessary to submit an interrogatory asking the jury to make a finding with regard to the sentence enhancement factor in section 18-12-302(1)(b), C.R.S. 2019 (repeat offender). This is a matter of law for the court to determine.**

**12-3:03**

**Manufacture of a Large-Capacity Magazine Without a Date  
Stamp or Marking**

**The elements of the crime of manufacture of a**



**large-capacity magazine without a date stamp or marking are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. manufactured a large-capacity magazine in Colorado on or after July 1, 2013,**
- 4. without including a permanent stamp or marking, legibly and conspicuously engraved or cast upon the outer surface of the large-capacity magazine, indicating that it was manufactured or assembled after July 1, 2013.**
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of manufacture of a large-capacity magazine without a date stamp or marking.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of manufacture of a large-capacity magazine without a date stamp or marking.**

**COMMENT**

1. See § 18-12-303(1), (3), C.R.S. 2019.

2. See Instruction F:196.2 (defining “large-capacity magazine”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).



## **FIREARMS—DEALERS**

### **CHAPTER 12-4**

## **FIREARMS—DEALERS**

### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2018 pursuant to a legislative reorganization. *See* Ch. 8, sec. 4, §§ 18-12-401 to -404, 2018 Colo. Sess. Laws 145, 150 to 51.

#### **12-4:01**

#### **Improper Firearms Record (Failure to Keep Record)**

The elements of the crime of improper firearms record (failure to keep record) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. engaged in the retail sale, rental, or exchange of firearms, pistols, or revolvers, and

[4. failed to keep a record of each pistol or revolver sold, rented, or exchanged at retail.]

[4. at the time of the transaction, failed to make a record of the sale, rental, or exchange in a book kept for that purpose.]

[4. the defendant's record of the sale, rental, or exchange failed to include one or more of the following pieces of information: the name of the person to whom the pistol or revolver was sold or rented or with whom exchanged; his or her age, occupation, residence, and, if residing in a city, the street and number therein where he or she resided; the make, caliber, and finish of said pistol or revolver, together with its number and serial letter, if any; the date of the sale, rental, or exchange of said pistol or revolver; and the name

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**of the employee or other person making such sale, rental, or exchange.]**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper firearms record (failure to keep record).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper firearms record (failure to keep record).**

**COMMENT**

1. *See* §§ 18-12-402, 18-12-403, C.R.S. 2019.

2. *See* Instruction F:156.5 (defining “firearms” (dealers)); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**12-4:02**

**Improper Firearms Record (Police Officer)**

**The elements of the crime of improper firearms record (police officer) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. engaged in the retail sale, rental, or exchange of firearms, pistols, or revolvers, and**

4. refused to exhibit his [her] record book detailing all such sales, rentals, or exchanges to a police officer when requested.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper firearms record (police officer).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper firearms record (police officer).

#### COMMENT

1. See §§ 18-12-402, 18-12-403, C.R.S. 2019.

2. See Instruction F:156.5 (defining “firearms” (dealers)); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

#### 12-4:03

#### Improper Firearms Record (False Information)

The elements of the crime of improper firearms record (false information) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a purchaser, lessee, or exchanger of a pistol or revolver, and



## COLORADO JURY INSTRUCTIONS—CRIMINAL

4. gave false information,

5. in connection with the making of a record kept by an individual, firm, or corporation engaged, within Colorado, in the retail sale, rental, or exchange of firearms, pistols, or revolvers.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper firearms record (false information).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper firearms record (false information).

### COMMENT

1. See §§ 18-12-402, 18-12-403, C.R.S. 2019.

2. See Instruction F:156.5 (defining “firearms” (dealers)); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, draft a supplemental instruction detailing the information that retail firearms dealers must keep in records. *See* Instruction 12-4:01 (improper firearms record (failure to keep record)).

## CHAPTER 12-5

### BACKGROUND CHECKS—GUN SHOWS

#### CHAPTER COMMENTS

1. Section 18-12-505, C.R.S. 2019, provides that these offenses do

## BACKGROUND CHECKS—GUN SHOWS

not apply to transfers of antique firearms, *see* Instruction F:19, or transfers of curios or relics, *see* Instruction F:82. However, the Committee has not drafted model affirmative defense instructions.

2. The Committee added this chapter in 2018 pursuant to a legislative reorganization. *See* Ch. 8, sec. 5, §§ 18-12-501 to -508, 2018 Colo. Sess. Laws 145, 151 to 53.

### 12-5:01

#### Improper Background Check (Failure to Conduct)

The elements of the crime of improper background check (failure to conduct) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was a gun show vendor, and
  4. transferred or attempted to transfer a firearm at a gun show, and
  5. before such transfer or attempted transfer occurred, he [she] failed to require that a background check, in accordance with the national instant criminal background check system, was conducted of the prospective transferee.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper background check (failure to conduct).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you

## COLORADO JURY INSTRUCTIONS—CRIMINAL

**should find the defendant not guilty of improper background check (failure to conduct).**

### COMMENT

1. *See* § 18-12-501(1)(a), (4), C.R.S. 2019.

2. *See* Instruction F:154.5 (defining “firearm” (background checks—gun shows)); Instruction F:166.2 (defining “gun show”); Instruction F:166.8 (defining “gun show vendor”); Instruction F:375 (defining “transferee”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, draft a supplemental instruction detailing the relevant provisions of the national instant criminal background check system. *See* § 24-33.5-424, C.R.S. 2019.

4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

**12-5:02**

### **Improper Background Check (Failure to Obtain Approval)**

**The elements of the crime of improper background check (failure to obtain approval) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a gun show vendor, and
4. transferred or attempted to transfer a firearm at a gun show, and
5. before such transfer or attempted transfer occurred, he [she] failed to obtain approval of the



## BACKGROUND CHECKS—GUN SHOWS

transfer from the Colorado bureau of investigation after a background check had been requested by a licensed gun dealer, in accordance with the national instant criminal background check system.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper background check (failure to obtain approval).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper background check (failure to obtain approval).

### COMMENT

1. See § 18-12-501(1)(b), (4), C.R.S. 2019.

2. See Instruction F:154.5 (defining “firearm” (background checks—gun shows)); Instruction F:166.2 (defining “gun show”); Instruction F:166.8 (defining “gun show vendor”); Instruction F:196.65 (defining “licensed gun dealer”); Instruction F:375 (defining “transferee”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, draft a supplemental instruction detailing the relevant provisions of the national instant criminal background check system. See § 24-33.5-424, C.R.S. 2019.

4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

12-5:03

**Improper Background Check (Promoter's Failure to Arrange)**

The elements of the crime of improper background check (promoter's failure to arrange) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a gun show promoter, and
4. failed to arrange for the services of a licensed gun dealer on the premises of the gun show to obtain a background check as required by law.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper background check (promoter's failure to arrange).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper background check (promoter's failure to arrange).

**COMMENT**

1. See § 18-12-501(2), (4), C.R.S. 2019.

2. See Instruction F:166.2 (defining "gun show"); Instruction F:166.5 (defining "gun show promoter"); Instruction F:196.65 (defining "licensed gun dealer"); see also § 18-1-503(2), C.R.S. 2019 ("Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission

## **BACKGROUND CHECKS—GUN SHOWS**

of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, draft a supplemental instruction detailing the relevant background check requirements. *See* § 24-33.5-424, C.R.S. 2019.

**12-5:04**

### **Improper Background Check (Transfer Without Check)**

The elements of the crime of improper background check (transfer without check) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was any part of a firearm transaction that took place at a gun show,
  4. a firearm was transferred, and
  5. no background check relating to that transfer had been obtained by a licensed gun dealer.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper background check (transfer without check).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper background check (transfer without check).



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### COMMENT

1. *See* § 18-12-501(3), (4), C.R.S. 2019.

2. *See* Instruction F:154.5 (defining “firearm” (background checks—gun shows)); Instruction F:166.2 (defining “gun show”); Instruction F:196.65 (defining “licensed gun dealer”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Unlike subsections (1) and (2)—which apply to gun show vendors and gun show promoters, respectively—subsection (3) of section 18-12-501 does not specify a class of individuals. Instead, it simply provides that “[i]f any part of a firearm transaction takes place at a gun show, no firearm shall be transferred unless a background check has been obtained by a licensed gun dealer.” The Committee takes no position on whether the General Assembly intended for subsection (3) to apply to anyone or only to gun show vendors, dealers, or promoters.

4. If necessary, draft a supplemental instruction detailing the relevant background check requirements. *See* § 24-33.5-424, C.R.S. 2019.

### 12-5:05

#### False Information Regarding Gun Record

**The elements of the crime of false information regarding gun record are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. gave false information,
4. in connection with the making of a record kept by a licensed gun dealer who obtained a background check on a prospective transferee and recorded the transfer as required by law.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false information regarding gun record.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false information regarding gun record.

#### COMMENT

1. *See* § 18-12-502(1), (2), C.R.S. 2019.

2. *See* Instruction F:196.65 (defining “licensed gun dealer”); Instruction F:375 (defining “transferee”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, draft a supplemental instruction detailing the information that must be kept in records. *See* § 18-12-402, C.R.S. 2019; Instruction 12-4:01 (improper firearms record (failure to keep record)).

#### 12-5:06

##### Failure to Post Background Check Notice

The elements of the crime of failure to post background check notice are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a gun show promoter, and
4. failed to post prominently a notice, in a form prescribed by the executive director of the department of public safety or his or her designee,

## COLORADO JURY INSTRUCTIONS—CRIMINAL

5. setting forth the requirement for a background check as provided by law.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to post background check notice.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to post background check notice.

### COMMENT

1. *See* § 18-12-504(1), (2), C.R.S. 2019.

2. *See* Instruction F:166.5 (defining “gun show promoter”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

## CHAPTER 13

### MISCELLANEOUS OFFENSES

#### CHAPTER COMMENTS

1. The Committee added this chapter in 2016.

13:01

#### Abuse of a Corpse (Removal)

The elements of the crime of abuse of a corpse (removal) are:



## MISCELLANEOUS OFFENSES

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. without statutory or court-ordered authority,
4. removed the body or remains of any person from a grave or other place of sepulcher,
5. without the consent of the person who had the right to dispose of the remains.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of a corpse (removal).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of a corpse (removal).

## COMMENT

1. See § 18-13-101(1)(a), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The term “sepulcher” is not defined by statute. See, e.g., *Webster's Third New International Dictionary* 2071 (2002) (defining “sepulcher” as “a place for the interment of a dead body”).

4. If necessary, draft a supplemental instruction(s) to guide the jury's determination of: (1) whether the defendant had “statutory or

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court-ordered authority”; and/or (2) the identity of the person(s) who had authority to dispose of the remains pursuant to section 15-19-106, C.R.S. 2019.

**13:02**

### **Abuse of a Corpse (Treatment)**

**The elements of the crime of abuse of a corpse (treatment) are:**

- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. without statutory or court-ordered authority,**
  - 4. treated the body or remains of any person in a way that would outrage normal family sensibilities.**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of a corpse (treatment).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of a corpse (treatment).**

### **COMMENT**

1. *See* § 18-13-101(1)(b), C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that

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offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, draft a supplemental instruction to guide the jury’s determination of whether the defendant had “statutory or court-ordered authority.”

13:03

### Fighting by Agreement

The elements of the crime of fighting by agreement are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. fought one or more persons by agreement in a public place,
4. and the fight did not take place in a sporting event authorized by law.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fighting by agreement.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fighting by agreement.

### COMMENT

1. See § 18-13-104(1), C.R.S. 2019.



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2. See Instruction F:303 (defining “public place”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, draft a supplemental instruction to guide the jury’s determination of whether there was a “sporting event authorized by law” (e.g., a sanctioned boxing match).

13:04

### Dueling

**The elements of the crime of dueling are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. by agreement with another person,**
- 4. engaged in a fight with deadly weapons,**
- 5. whether in a public or private place.**

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of dueling.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of dueling.**

### COMMENT

1. See § 18-13-104(2), C.R.S. 2019.

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2. *See* Instruction F:88 (defining “deadly weapon”); Instruction F:303 (defining “public place”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The Committee has included the fifth element because its language appears in the statute. *See* § 18-13-104(2). The Committee notes, however, that this “public or private place” language is arguably superfluous, as the prosecution will never need to introduce evidence to prove this element. Rather, this language presumably clarifies that—unlike with the crime of fighting by agreement, *see* Instruction 13:03—the act of fighting by agreement with deadly weapons *in private* is not a defense to dueling.

### 13:05

#### Discarding or Abandoning an Article With a Compartment

The elements of the crime of discarding or abandoning an article with a compartment are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
- [3. abandoned or discarded, in any public or private place accessible to children,
4. a chest, closet, piece of furniture, refrigerator, icebox, motor vehicle, or other article, having a compartment of a capacity of one and one-half cubic feet or more and having a door or lid which when closed cannot be opened easily from the inside.]
- [3. was an owner, lessee, or manager of any public or private place accessible to children, and
4. knowingly,
5. permitted an abandoned or discarded chest,

closet, piece of furniture, refrigerator, icebox, motor vehicle, or other article, having a compartment of a capacity of one and one-half cubic feet or more and having a door or lid which when closed cannot be opened easily from the inside, to remain in such condition.]

[\_. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of discarding or abandoning an article with a compartment.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of discarding or abandoning an article with a compartment.

#### COMMENT

1. See § 18-13-106, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:303 (defining “public place”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

13:06

#### **Interference With Persons With Disabilities (False Impersonation)**

The elements of the crime of interference with persons with disabilities (false impersonation) are:

1. That the defendant,



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2. in the State of Colorado, at or about the date and place charged,

3. falsely impersonated an individual who [insert a description of the relevant disability, as defined in section 24-34-301(5.6), which incorporates the definition from “the federal ‘Americans with Disabilities Act of 1990,’ 42 U.S.C. sec. 12131, and its related amendments and implementing regulations”].

[4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference with persons with disabilities (false impersonation).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference with persons with disabilities (false impersonation).

### COMMENT

1. See § 18-13-107(1), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

13:07

### Interference With Persons With Disabilities (Denial of Right or Privilege)

The elements of the crime of interference with

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**persons with disabilities (denial of right or privilege) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. denied an individual who [insert a description of the relevant disability, as defined in section 24-34-301(5.6), which incorporates the definition from “the federal ‘Americans with Disabilities Act of 1990,’ 42 U.S.C. sec. 12131, and its related amendments and implementing regulations”],**
- 5. the right or privilege to [insert right or privilege protected in section 24-34-502, 24-34-502.2, 24-34-601, 24-34-802(1), or 24-34-803].**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of interference with persons with disabilities (denial of right or privilege).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of interference with persons with disabilities (denial of right or privilege).**

**COMMENT**

1. See § 18-13-107(3), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

13:07.3

**Intentional Misrepresentation of Entitlement to an Assistance Animal**

The elements of the crime of intentional misrepresentation of entitlement to an assistance animal are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. misrepresented entitlement to an animal in his [her] possession as an assistance animal,
5. for the purpose of obtaining any of the rights or privileges set forth in state or federal law for an individual with a disability as a reasonable accommodation in housing, and
6. he [she] was previously given a written or verbal warning regarding the fact that it is illegal to intentionally misrepresent entitlement to an assistance animal, and
- [7. he [she] knew that the animal was not an assistance animal with regard to him [her].]
- [7. he [she] knew that he [she] did not have a disability.]
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-



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**dant guilty of intentional misrepresentation of entitlement to an assistance animal.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of intentional misrepresentation of entitlement to an assistance animal.**

### COMMENT

1. *See* § 18-13-107.3(1), C.R.S. 2019.

2. *See* Instruction F:23.5 (defining “assistance animal”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”).

3. Section 18-13-107.3(5)(b) defines “disability” as follows: “‘Disability’ has the same meaning as set forth in the federal ‘Americans with Disabilities Act of 1990’, 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations and includes a handicap as that term is defined in the federal ‘Fair Housing Act’, 42 U.S.C. sec. 3601 et seq., as amended, and 24 CFR 100.201.” Because other statutory definitions of “disability” explicitly decline to incorporate the federal definition, *see* Instruction F:184, the Committee has not defined this term. The court should craft an appropriate definitional instruction that incorporates the relevant language from the federal statutes and regulations.

4. Regarding the fifth element, the court should provide a supplemental instruction defining the relevant privileges set forth in state or federal law. *See* § 18-13-107.3(5)(d) (“‘State and federal law’ includes section 24-34-803, C.R.S., the federal laws specified in [section 18-13-107.3(5)(a)], and rules and regulations implementing those laws.”).

5. The statute provides for an affirmative defense when certain written findings have been made by licensees. *See* § 18-13-107.3(4) (incorporating by reference + sections 12-240-144(1)(a), 12-245-229(1)(a), and 12-255-133(1)(a), C.R.S. 2019). However, the Committee has not drafted model affirmative defense instructions.

6. + In 2019, the Committee updated the statutory cross-references in Comment 5 to reflect a legislative amendment. *See* Ch. 136, sec. 99, § 18-13-107.3(4), 2019 Colo. Sess. Laws 613, 1677.

13:07.7

**Intentional Misrepresentation of a Service Animal**

The elements of the crime of intentional misrepresentation of a service animal are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. misrepresented an animal in his [her] possession as his [her] service animal or service-animal-in-training,
5. for the purpose of obtaining [list the relevant right(s) or privilege(s) set forth in section 24-34-803, C.R.S., 2016], and
6. he [she] was previously given a written or verbal warning regarding the fact that it is illegal to intentionally misrepresent a service animal, and
7. he [she] knew that the animal in question was not a service animal or service-animal-in-training.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of intentional misrepresentation of a service animal.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you

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**should find the defendant not guilty of intentional misrepresentation of a service animal.**

### COMMENT

1. *See* § 18-13-107.7(1), C.R.S. 2019.

2. *See* Instruction F:23.5 (defining “assistance animal”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:334.5 (defining “service-animal-in-training”).

3. Section 18-13-107.7(4)(c) defines “service animal” as follows: “‘Service animal’ has the same meaning as set forth in the implementing regulations of Title II and Title III of the federal ‘Americans with Disabilities Act of 1990’, 42 U.S.C. sec. 12101 et seq.” This definition differs from that found in Instruction F:334 (cruelty to a service animal). Therefore, rather than providing Instruction F:334, the court should draft a separate definitional instruction that derives from the federal regulations.

**13:08**

### Removal of Timber From State Lands

**The elements of the crime of removal of timber from state lands are:**

1. **That the defendant,**
2. **in the State of Colorado, at or about the date and place charged,**
3. **cut or removed any timber from any state land,**
4. **without lawful authority.**
- [5. **and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.**]

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of removal of timber from state lands.**



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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of removal of timber from state lands.

### COMMENT

1. See § 18-13-108, C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, draft a supplemental instruction to guide the jury’s determination of whether the defendant had “lawful authority.”

13:09

### Firing Woods or Prairie

The elements of the crime of firing woods or prairie are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly, recklessly, or with criminal negligence,
- [4. without lawful authority,
5. set on fire, or caused to be set on fire, any woods, prairie, or grounds of any description,
6. other than his [her] own.]
- [4. permitted a fire,
5. set or caused to be set by the defendant,

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**6. to pass from the defendant's own grounds to the injury of any other person.]**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of firing woods or prairie.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of firing woods or prairie.**

**COMMENT**

1. See § 18-13-109(1)(a), C.R.S. 2019.

2. See Instruction F:79 (defining "criminal negligence"); Instruction F:195 (defining "knowingly"); Instruction F:308 (defining "recklessly").

3. It is unclear whether the phrase "to the injury of any other person" encompasses property damage.

**13:10**

**Firing Woods or Prairie (Knowing Violation)**

**The elements of the crime of firing woods or prairie (knowing violation) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- [4. without lawful authority,**

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5. set on fire, or caused to be set on fire, any woods, prairie, or grounds of any description,

6. any woods, prairie, or grounds of any description,

7. other than his [her] own, and]

[4. permitted a fire,

5. set or caused to be set by a person without lawful authority,

6. to pass from the defendant's own grounds to the injury of any other person, and]

\_. knew or reasonably should have known that he [she] was violating [insert description of the applicable order, rule, or regulation lawfully issued by a governmental authority that prohibits, bans, restricts, or otherwise regulates fires during periods of extreme fire hazard and that is designed to promote the safety of persons and property].

[\_. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of firing woods or prairie (knowing violation).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of firing woods or prairie (knowing violation).



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### COMMENT

1. *See* § 18-13-109(2)(a), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”).

3. It is unclear whether the phrase “to the injury of any other person” encompasses property damage.

4. The statute includes four exemptions from criminal liability for lawful burning activities. *See* § 18-13-109(2)(b), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

13:11

### Intentionally Setting Wildfire

The elements of the crime of intentionally setting wildfire are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
- [4. without lawful authority,
5. set on fire, or caused to be set on fire, any woods, prairie, or grounds of any description,
6. other than his [her] own, and]
- [4. permitted a fire,
5. set or caused to be set by the defendant,
6. to pass from the defendant’s own grounds to the grounds of another, and]
7. by so doing, placed another in danger of death or serious bodily injury or placed any building or occupied structure of another in danger of damage.

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**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of intentionally setting wildfire.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of intentionally setting wildfire.**

### COMMENT

1. See § 18-13-109.5(1), C.R.S. 2019.

2. See Instruction F:40 (defining “building”); Instruction F:185 (defining “intentionally”); Instruction F:248 (defining “occupied structure”); Instruction F:332 (defining “serious bodily injury”).

### 13:12

## **Unlawful Purchase or Sale of Commodity Metals (Book or Register)**

**The elements of the crime of unlawful purchase or sale of commodity metals (book or register) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was an owner, keeper, or proprietor of a junk shop, junk store, salvage yard, or junk cart or other vehicle, or a collector of or dealer in junk, salvage, or other secondhand property, and**
- [4. failed to keep a book or register detailing all transactions involving commodity metals.]**

**[4. the defendant's book or register involving**

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commodity metals did not include [insert a description of the relevant requirement(s) from section 18-13-111(1)(b)–(d)].]

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful purchase or sale of commodity metals (book or register).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful purchase or sale of commodity metals (book or register).

### COMMENT

1. See § 18-13-111(1)(a) to (d), (5), C.R.S. 2019.

2. See Instruction F:38.3 (defining “book or register”); Instruction F:57.8 (defining “commodity metal”); Instruction F:88.5 (defining “dealer”); Instruction F:263 (defining “peace officer” (sale of secondhand property)); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute includes several exemptions from criminal liability. See § 18-13-111(3), (4), (7), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### 13:13

#### Unlawful Purchase or Sale of Commodity Metals (Peace Officer)

The elements of the crime of unlawful purchase or sale of commodity metals (peace officer) are:



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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was an owner, keeper, or proprietor of a junk shop, junk store, salvage yard, or junk cart or other vehicle, or a collector of or dealer in junk, salvage, or other secondhand property, and
  4. failed to make a book or register detailing all transactions involving commodity metals available to any peace officer for inspection at any reasonable time.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful purchase or sale of commodity metals (peace officer).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful purchase or sale of commodity metals (peace officer).

### COMMENT

1. See § 18-13-111(1)(e), (5), C.R.S. 2019.

2. See Instruction F:38.3 (defining “book or register”); Instruction F:57.8 (defining “commodity metal”); Instruction F:88.5 (defining “dealer”); Instruction F:263 (defining “peace officer” (sale of secondhand property)); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

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3. The statute includes several exemptions from criminal liability. See § 18-13-111(3), (4), (7), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### **13:14**

#### **Unlawful Purchase or Sale of Commodity Metals (False Information)**

**The elements of the crime of unlawful purchase or sale of commodity metals (false information) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. gave false information with respect to [insert a description of the relevant information that is required to be maintained in a book or register by section 18-13-111(1)(b)–(d)].**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful purchase or sale of commodity metals (false information).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful purchase or sale of commodity metals (false information).**

#### **COMMENT**

1. See § 18-13-111(1), (5), C.R.S. 2019.

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2. See Instruction F:38.3 (defining “book or register”); Instruction F:57.8 (defining “commodity metal”); Instruction F:195 (defining “knowingly”).

3. The statute includes several exemptions from criminal liability. See § 18-13-111(3), (4), (7), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### 13:15

#### **Unlawful Purchase or Sale of Commodity Metals (Scrap Theft Alert System)**

**The elements of the crime of unlawful purchase or sale of commodity metals (scrap theft alert system) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a purchaser of commodity metals, and
- [4. failed to sign up with the scrap theft alert system maintained by the institute of scrap recycling industries, incorporated, to receive alerts regarding thefts of commodity metals in his [her] geographic area.]
- [4. failed to download and maintain the scrap metal theft alerts generated by the scrap theft alert system maintained by the institute of scrap recycling industries, incorporated.]
- [4. failed to use the alerts generated by the scrap theft alert system maintained by the institute of scrap recycling industries, incorporated, to identify potentially stolen commodity metals.]
- [4. failed to train his [her] employees to use the alerts generated by the scrap theft alert system maintained by the institute of scrap recycling



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industries, incorporated, during his [her] daily operations.]

[4. failed to maintain for ninety days copies of any theft alerts received and downloaded pursuant to the scrap theft alert system maintained by the institute of scrap recycling industries, incorporated.]

[4. failed to maintain documentation that he [she] educates employees about, and provides to employees, scrap theft alerts.]

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful purchase or sale of commodity metals (scrap theft alert system).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful purchase or sale of commodity metals (scrap theft alert system).

COMMENT

1. See § 18-13-111(1.3), (5), C.R.S. 2019.

2. See Instruction F:57.8 (defining “commodity metal”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If the “institute of scrap recycling industries” has been replaced by a successor organization, the court should substitute the name of that organization in its place in the fourth element. See § 18-13-111(1.3)(a)(I), C.R.S. 2019.

## MISCELLANEOUS OFFENSES

4. The statute includes several exemptions from criminal liability. See § 18-13-111(3), (4), (7), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

13:16

### Unlawful Purchase or Sale of Commodity Metals (Method of Payment)

The elements of the crime of unlawful purchase or sale of commodity metals (method of payment) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an owner, keeper, or proprietor of a junk shop, junk store, salvage yard, or junk cart or other vehicle, or a collector of or dealer in junk, salvage, or other secondhand property, and
4. paid the seller of [a] commodity metal[s] more than three hundred dollars, and
5. did not pay the seller by check or by any process in which a picture of the seller was taken when the money was paid.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful purchase or sale of commodity metals (method of payment).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful



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### **purchase or sale of commodity metals (method of payment).**

#### **COMMENT**

1. See § 18-13-111(1.5), (5), C.R.S. 2019.

2. See Instruction F:57.8 (defining “commodity metal”); Instruction F:88.5 (defining “dealer”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute includes several exemptions from criminal liability. See § 18-13-111(3), (4), (7), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

#### **13:17**

### **Unlawful Purchase or Sale of Commodity Metals (Record Retention)**

**The elements of the crime of unlawful purchase or sale of commodity metals (record retention) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an owner, keeper, or proprietor of a junk shop, junk store, salvage yard, or junk cart or other vehicle, or a collector of or dealer in junk, salvage, or other secondhand property, and
- [4. failed to make a digital photographic record, video record, or other record that identifies the seller and the commodity metal that the seller was selling.]
- [4. made a digital photographic record, video record, or other record that identifies the seller and the commodity metal that the seller was sell-



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ing, but failed to retain it for one hundred eighty days.]

[4. made a digital photographic record, video record, or other record that identifies the seller and the commodity metal that the seller was selling; was an owner; and did not permit a law enforcement officer to make inspections of the record.]

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful purchase or sale of commodity metals (record retention).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful purchase or sale of commodity metals (record retention).

### COMMENT

1. See § 18-13-111(2), (5), C.R.S. 2019.

2. See Instruction F:57.8 (defining “commodity metal”); Instruction F:88.5 (defining “dealer”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute includes several exemptions from criminal liability. See § 18-13-111(3), (4), (7), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

13:18.SP

**Unlawful Purchase or Sale of Commodity Metals—Special Instruction**

Evidence that metal purchased by a dealer for the purpose of recycling had a value of fifty cents per pound or greater for purposes of recycling gives rise to a permissible inference that the metal was a commodity metal.

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is warranted by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

**COMMENT**

1. See § 18-13-111(6), C.R.S. 2019.
2. See Instruction F:57.8 (defining “commodity metal”).
3. Although the statute speaks in terms of a rebuttable presumption, the concept should be explained as a permissible inference. See *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

13:19.INT

**Unlawful Purchase or Sale of Commodity Metals—Interrogatory (Value)**

If you find the defendant not guilty of unlawful purchase or sale of commodity metals, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

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If, however, you find the defendant guilty of unlawful purchase or sale of commodity metals, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Was the value of the commodity metal involved five hundred dollars or more? (Answer “Yes” or “No”)

The prosecution has the burden to prove the value of the commodity metal involved beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-13-111(5), C.R.S. 2019.

13:20

### Hazardous Waste Violations (Abandoning a Vehicle)

The elements of the crime of hazardous waste violation (abandoning a vehicle) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. abandoned a vehicle containing hazardous waste,



4. upon a street, highway, right-of-way, or any other public property or upon any private property without the express consent of the owner or person in lawful charge of that private property.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of hazardous waste violation (abandoning a vehicle).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of hazardous waste violation (abandoning a vehicle).

#### COMMENT

1. *See* § 18-13-112(1), C.R.S. 2019.

2. *See* Instruction F:03.3 (defining “abandon” (hazardous waste violations)); Instruction F:167.5 (defining “hazardous waste”); Instruction F:385.7 (defining “vehicle” (hazardous waste violations)); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

#### 13:21.SP

#### **Hazardous Waste Violations—Special Instruction (Indicia of Intent to Abandon a Vehicle)**

Evidence of the following gives rise to a permissible inference of an intention not to retain possession of, or assert ownership or control over, a vehicle:

The vehicle had been left for more than three

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days unattended and unmoved; or license plates or other identifying marks had been removed from the vehicle; or the vehicle had been damaged or was deteriorated so extensively that it had value only for junk or salvage; or the owner had been notified by a law enforcement agency to remove the vehicle and it had not been removed within twenty-four hours after notification.

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

### COMMENT

1. See § 18-13-112(2)(a)(II), C.R.S. 2019.

2. This instruction should be used in conjunction with Instruction F:03.3 (defining “abandon” (hazardous waste materials)).

### 13:22

#### Hazardous Waste Violations (Intentionally Spilling)

The elements of the crime of hazardous waste violation (intentionally spilling) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. spilled hazardous waste upon a street, high-

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way, right-of-way, or any other public property or upon any private property,

5. without the express consent of the owner or person in lawful charge of that private property.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of hazardous waste violation (intentionally spilling).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of hazardous waste violation (intentionally spilling).

### COMMENT

1. See § 18-13-112(1), C.R.S. 2019.

2. See Instruction F:167.5 (defining "hazardous waste"); Instruction F:185 (defining "intentionally").

### 13:23

#### Unlawful Sale of Metal Beverage Container With Detachable Opening Device

The elements of the crime of unlawful sale of a metal beverage container with a detachable opening device are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,



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3. sold or offered for sale at retail within Colorado,

4. any metal beverage container with a detachable opening device designed to detach from the beverage container when a user opens the beverage container in a manner reasonably calculated to gain access to its contents.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful sale of a metal beverage container with a detachable opening device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful sale of a metal beverage container with a detachable opening device.

### COMMENT

1. See § 18-13-113(2), C.R.S. 2019.

2. See Instruction F:31.5 (defining “beverage”); Instruction F:31.8 (defining “beverage container”); Instruction F:392.5 (defining “within Colorado”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute includes an exemption from criminal liability for “metal beverage containers with opening devices consisting of sensitized adhesive tape.” See § 18-13-113(3), C.R.S. 2019. However, the Committee has not drafted a model affirmative defense instruction.

**Unlawful Sale or Trade of Secondhand Property (Records)**

The elements of the crime of unlawful sale or trade of secondhand property (records) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a secondhand dealer, and
- [4. failed to make a record containing all required information, as defined in these instructions,
5. of each sale or trade of secondhand property made by him [her], his [her] agent, or any person acting on his [her] behalf,
6. which sale or trade equaled or exceeded thirty dollars in value for each item.]
- [4. failed to make available to a peace officer for inspection at a reasonable time,
5. a record containing all required information, as defined in these instructions.]
- [4. failed to mail or deliver a record containing all required information, as defined in these instructions,
- [5. of a sale or trade of secondhand property made by him [her], his [her] agent, or any person acting on his [her] behalf,
6. which sale or trade equaled or exceeded thirty dollars in value for each item,

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7. to a local law enforcement agency within three days of the date of such sale or trade.]

[4. failed to keep a copy of a record containing all required information, as defined in these instructions,

5. of a sale or trade of secondhand property made by him [her], his [her] agent, or any person acting on his [her] behalf,

6. which sale or trade equaled or exceeded thirty dollars in value for each item,

7. for at least one year after the date of the sale or trade.]

[\_ and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful sale or trade of secondhand property (records).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful sale or trade of secondhand property (records).

### COMMENT

1. See § 18-13-114(1), (6)(a), C.R.S. 2019.

2. See Instruction F:199.8 (defining “local law enforcement agency” (sale of secondhand property)); Instruction F:265.3 (defining “peace officer” (sale of secondhand property)); Instruction F:329.2 (defining “secondhand dealer”); Instruction F:329.3 (defining “secondhand property”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that



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offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Draft a special instruction explaining what information the defendant (or his or her agent) was required to record pursuant to section 18-13-114(2), C.R.S. 2019.

**13:25**

### **Unlawful Sale or Trade of Secondhand Property (False Information)**

**The elements of the crime of unlawful sale or trade of secondhand property (false information) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a buyer or person who traded with a secondhand dealer, or was a secondhand dealer, and**
- 4. knowingly,**
- 5. gave false information with respect to [insert description of the information that is required by section 18-13-114(2) that the defendant is alleged to have falsified].**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful sale or trade of secondhand property (false information).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**

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of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful sale or trade of secondhand property (false information).

### COMMENT

1. See § 18-13-114(2), (6)(b), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:329.2 (defining “secondhand dealer”).

## 13:26

### Unlawful Sale or Trade of Secondhand Property (Flea Markets and Similar Facilities)

The elements of the crime of unlawful sale or trade of secondhand property (flea markets and similar facilities) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an operator of a flea market or similar facility in which secondhand property was offered for sale or trade, and
4. failed to inform a secondhand dealer of [insert a description of the relevant requirement from section 18-13-114], or failed to provide a secondhand dealer with the forms for recording [insert a description of the information required by section 18-13-114(2)].

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-

**dant guilty of unlawful sale or trade of secondhand property (flea markets and similar facilities).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful sale or trade of secondhand property (flea markets and similar facilities).**

**COMMENT**

1. *See* § 18-13-114(8) C.R.S. 2019.

2. *See* Instruction F:329.2 (defining “secondhand dealer”); Instruction F:329.3 (defining “secondhand property”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**13:27**

**Sale Without Proof of Ownership**

**The elements of the crime of sale without proof of ownership are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a secondhand dealer or a dealer and retailer of new goods who sold goods at a flea market or similar facility, and**
- 4. sold or offered for sale,**
- 5. [baby food of a type usually consumed by children under three years of age] [cosmetics] [devices] [drugs] [infant formula] [batteries] [razor blades],**



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### **6. without proof of ownership.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of sale without proof of ownership.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sale without proof of ownership.**

### **COMMENT**

1. *See* § 18-13-114.5(1), C.R.S. 2019.

2. *See* Instruction F:75.8 (defining “cosmetic”); Instruction F:98.5 (defining “device”); Instruction F:111.5 (defining “drug” (sale without proof of ownership)); Instruction F:181.3 (defining “infant formula”); Instruction F:287.8 (defining “proof of ownership”); Instruction F:329.2 (defining “secondhand dealer”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### **13:28**

### **Failure to Make Proof of Ownership Available**

**The elements of the crime of failure to make proof of ownership available are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a secondhand dealer or a dealer and**

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**retailer of new goods who sold goods at a flea market or similar facility, and**

- 4. sold or offered for sale,**
  - 5. [baby food of a type usually consumed by children under three years of age] [cosmetics] [devices] [drugs] [infant formula] [batteries] [razor blades], and**
  - 6. failed to make proof of ownership available to any peace officer for inspection at any reasonable time.**
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to make proof of ownership available.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to make proof of ownership available.**

**COMMENT**

1. See § 18-13-114.5(1), (2), C.R.S. 2019.

2. See Instruction F:75.8 (defining “cosmetic”); Instruction F:98.5 (defining “device”); Instruction F:111.5 (defining “drug” (sale without proof of ownership)); Instruction F:181.3 (defining “infant formula”); Instruction F:265.3 (defining “peace officer” (sale of secondhand property)); Instruction F:287.8 (defining “proof of ownership”); Instruction F:329.2 (defining “secondhand dealer”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).



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**13:29**

**Failure to Post Notice**

**The elements of the crime of failure to post notice are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- [3. was a secondhand dealer, and**
- 4. failed to conspicuously post a notice in a place clearly visible to all buyers and traders,**
- 5. which set forth the following information: [insert statement of information required by section 18-13-115(1)].]**
- [3. was an operator of a flea market or similar facility, and**
- 4. failed to post notice containing the following information: [insert statement of information required by section 18-13-115(1)],**
- 5. in such a manner as to be obvious to all persons who entered the flea market or similar facility.]**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to post notice.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**



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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to post notice.**

**COMMENT**

1. *See* § 18-13-115(1), (3), C.R.S. 2019.

2. *See* Instruction F:329.2 (defining “secondhand dealer”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**13:30**

**Failure to Comply With Sales Tax License Requirements  
(Unlicensed)**

**The elements of the crime of failure to comply with sales tax license requirements (unlicensed) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a secondhand dealer,**
- 4. not operating at a flea market or similar facility, and**
- 5. failed to obtain a sales tax license for [insert a description of the applicable provision(s) from section 39-26-103].**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-**

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**dant guilty of failure to comply with sales tax license requirements (unlicensed).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to comply with sales tax license requirements (unlicensed).**

### COMMENT

1. *See* § 18-13-116(1), C.R.S. 2019.

2. *See* Instruction F:329.2 (defining “secondhand dealer”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**13:31**

### **Failure to Comply With Sales Tax License Requirements (Failure to Collect and Remit)**

**The elements of the crime of failure to comply with sales tax license requirements (failure to collect and remit) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a secondhand dealer or other person operating at a flea market or similar facility, and**
- 4. failed to collect sales tax, or collected sales tax but failed to remit the proceeds to the operator of the flea market or similar facility.**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to comply with sales tax license requirements (failure to collect and remit).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to comply with sales tax license requirements (failure to collect and remit).

### COMMENT

1. See § 18-13-116(1), C.R.S. 2019.

2. See Instruction F:329.2 (defining “secondhand dealer”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

13:32

### Failure to Comply With Sales Tax License Requirements (Operator of a Flea Market or Similar Facility)

The elements of the crime of failure to comply with sales tax license requirements (operator of a flea market or similar facility) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a person operating at a flea market or similar facility, and
4. failed to,
5. obtain a sales tax license which was applicable



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to all sales occurring at the flea market or similar facility, collect the sales tax from each second-hand dealer operating therein who did not have his [her] own sales tax license, or remit such proceeds as provided by [insert description of relevant statutory provision for remittance of sales taxes].

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to comply with sales tax license requirements (operator of a flea market or similar facility).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to comply with sales tax license requirements (operator of a flea market or similar facility).

### COMMENT

1. See § 18-13-116(1), C.R.S. 2019.

2. See Instruction F:329.2 (defining “secondhand dealer”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. For law pertaining to remittance of sales taxes, see sections 39-26-105.3 to -105.5, C.R.S. 2019.

13:33

**Failure to Comply With Sales Record Requirements**

The elements of the crime of failure to comply with sales record requirements are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a secondhand dealer, or a dealer of new goods as a retailer who sold such goods at a flea market or similar facility or any nonpermanent location, and
4. failed to,
5. keep and preserve suitable records of sales made by him [her] and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he [she] was liable pursuant to [insert a relevant description from part 1 of article 26 of title 39]; keep and preserve for a period of three years all invoices of goods and merchandise purchased for resale, + including a store credit, gift card, or merchandise card; or make available for examination all such books, invoices, or other records at any time by the executive director of the department of revenue, or his [her] duly authorized agent, or any peace officer.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-

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**dant guilty of failure to comply with sales record requirements.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to comply with sales record requirements.**

### COMMENT

1. *See* + § 18-13-117(1)(a), C.R.S. 2019.

2. *See* Instruction F:265.3 (defining “peace officer” (sale of second-hand property)); Instruction F:329.2 (defining “secondhand dealer”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The court may wish to modify the fifth element depending on the allegations at issue in the case.

4. + In 2019, pursuant to a legislative amendment, the Committee added the phrase “including a store credit, gift card, or merchandise card” to the fifth element, and it modified the statutory citation in Comment 1. *See* Ch. 87, sec. 1, § 18-13-117(1)(a), 2019 Colo. Sess. Laws 322, 322.

### + 13:33.4

#### Failure to Record Credit Purchase

**The elements of the crime of failure to record credit purchase are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a secondhand dealer, or a dealer of new goods as a retailer who sold such goods at a flea market or similar facility or any nonpermanent location, and**



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4. failed to record the purchase of a store credit, gift card, or merchandise card for resale in a lawful register that is accessible to law enforcement.

- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to record credit purchase.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to record credit purchase.

### COMMENT

1. See § 18-13-117(1)(b), C.R.S. 2019.

2. See Instruction F:329.2 (defining “secondhand dealer”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If appropriate, the court should draft a supplemental instruction describing the requirements of the lawful register. *See* Instruction 13:33.5.SP; *see also* § 18-16-105, C.R.S. 2019; Instruction 16:03 (failure to maintain a register (requirements)).

4. The terms store credit, gift card, and merchandise card are not defined by statute.

5. + The Committee added this instruction in 2019 pursuant to new legislation. *See* Ch. 87, sec. 1, § 18-13-117(1)(b), 2019 Colo. Sess. Laws 322, 322.

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### + 13:33.5.SP

#### **Failure to Record Credit Purchase—Special Instruction (Register Requirements)**

One of the elements of the crime of failure to record credit purchase is that the defendant failed to record the purchase of a store credit, gift card, or merchandise card for resale in a lawful register that is accessible to law enforcement.

In order to qualify as lawful, the register must have been kept in a permanent, well-bound book, and it must have included the following information for each purchase: the signature of the seller; the name, address, and date of birth of the seller and his [her] driver's license number or other I.D. number from [insert other allowed form of identification pursuant to section 18-16-103, C.R.S. 2019]; the date, time, and place of the purchase; and an accurate and detailed account and description of each valuable article being purchased, including any trademark, identification number, serial number, model number, brand name, or other identifying marks on such articles and a description by weight and design of such articles.

#### **COMMENT**

1. *See* §§ 18-13-117(1)(b), 18-16-105(1), (2), C.R.S. 2019.

2. *See* Instruction F:306.7 (defining “purchase”); Instruction F:330.5 (defining “seller”); Instruction F:385.3 (defining “valuable article”); *see also* Instruction 16:03 (failure to maintain a register (requirements)).

3. The court should only give this instruction when there is a dispute regarding whether the defendant's register qualified as lawful. *See* § 18-13-117(1)(b) (requiring the dealer to record the purchase in a register “as described in section 18-16-105”). Additionally, if there is no dispute that the defendant's register satisfied certain requirements enumerated in the second paragraph, the court may remove the language highlighting those requirements from its instruction.

4. + The Committee added this instruction in 2019 pursuant to new legislation. *See* Ch. 87, sec. 1, § 18-13-117(1)(b), 2019 Colo. Sess. Laws 322, 322.



+ 13:33.6.INT

**Failure to Record Credit Purchase—Interrogatory (Value)**

If you find the defendant not guilty of failure to record credit purchase, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of failure to record credit purchase, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:

[Was the value of the store credit, gift card, or merchandise card thirty dollars or greater? (Answer “Yes” or “No”)]

[Was the value of store credits, gift cards, or merchandise cards purchased in one transaction thirty dollars or greater? (Answer “Yes” or “No”)]

The prosecution has the burden to prove the value beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

**COMMENT**

1. See § 18-13-117(2)(b), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).
3. + The Committee added this instruction in 2019 pursuant to new



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legislation. *See* Ch. 87, sec. 1, § 18-13-117(2)(b), 2019 Colo. Sess. Laws 322, 323.

**13:34**

### **Abuse of Health Insurance (Full Payment by Third-Party Payor)**

The elements of the crime of abuse of health insurance (full payment by third-party payor) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. provided health care, and
  4. knowingly,
  5. accepted from any third-party payor, as payment in full for services rendered, the amount the third-party payor covered, and
  6. the effect was to eliminate the need for payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of health insurance (full payment by third-party payor).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you

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**should find the defendant not guilty of abuse of health insurance (full payment by third-party payor).**

**COMMENT**

1. See § 18-13-119(3), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).
3. The statute includes several exemptions from criminal liability. See § 18-13-119(5), (6), (8), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

**13:35**

**Abuse of Health Insurance (Inflation of Submitted Fee)**

**The elements of the crime of abuse of health insurance (inflation of submitted fee) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. provided health care, and
4. knowingly,
5. submitted a fee to a third-party payor which was higher than the fee the defendant had agreed to accept from the insured patient with the understanding of waiving the required deductible or copayment, and
6. the effect was to eliminate the need for payment by the patient of any required deductible or copayment applicable in the patient’s health benefit plan.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of health insurance (inflation of submitted fee).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of health insurance (inflation of submitted fee).

COMMENT

1. *See* § 18-13-119(3), C.R.S. 2019.
2. *See* Instruction F:195 (defining “knowingly”).
3. The statute includes several exemptions from criminal liability. *See* § 18-13-119(5), (6), (8), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

13:36.SP

**Abuse of Health Insurance—Special Instruction (Regular Business Practice)**

Evidence of the following gives rise to a permissible inference that a person was engaged in waiving the deductible or copayment as a regular business practice:

[A person provided health care and waived the deductible or copayment for more than one-fourth of his [her] patients during any calendar year [, excluding patients covered by [insert a description of the relevant exclusion from section 18-13-119(5)]]].]

[A person provided health care and advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that he [she] would accept from any third-party payor, as payment in full for services rendered, the amount the third-party payor covers.]



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A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

### COMMENT

1. *See* § 18-13-119(6)(b), C.R.S. 2019.

2. Although the statute speaks in terms of a presumption, the concept should be explained as a permissible inference. *See Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

13:37

### Abuse of Property Insurance (Fee Inflation)

The elements of the crime of abuse of property insurance (fee inflation) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. provided repairs, goods, or services, and
4. knowingly,
5. submitted a fee to an insurer which was higher than a fee estimate the defendant had provided to the insured or which was higher than the fee the defendant had agreed to accept from the insured, and
6. the effect was to provide the insured a rebate

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or something of value to attract the insured to do business with the defendant and the cost of providing the rebate or thing of value was passed on to the insurer as a part of the higher fee.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of property insurance (fee inflation).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of property insurance (fee inflation).

### COMMENT

1. See § 18-13-119.5(3)(a), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:371 (defining “thing of value”).

**13:38**

### **Abuse of Property Insurance (Improperly Providing to Insurance Company)**

The elements of the crime of abuse of property insurance (improperly providing to insurance company) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. provided repairs, goods, or services, and

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4. **knowingly,**
5. **provided a rebate or a gift, cash, or thing of value,**
6. **to an insurance company or its representative, agent, employee, or other acting on behalf of the insurance company,**
7. **in connection with any claim under an insurance policy which insured for property damage.**
- [8. **and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.**]

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of property insurance (improperly providing to insurance company).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of property insurance (improperly providing to insurance company).**

**COMMENT**

1. *See* § 18-13-119.5(3)(b), C.R.S. 2019.
2. *See* Instruction F:195 (defining “knowingly”); Instruction F:371 (defining “thing of value”).

**13:39**

**Abuse of Property Insurance (Accepting Rebate)**

**The elements of the crime of abuse of property insurance (accepting) are:**

1. **That the defendant,**



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2. in the State of Colorado, at or about the date and place charged,

3. was an insurance company, or its agent, employee, representative, or other person acting on behalf of the insurance company, and

4. knowingly,

5. accepted a rebate or a gift, cash, or thing of value,

6. from any person who provides repairs, goods, or services,

7. in connection with any claim under an insurance policy which insured for property damage.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abuse of property insurance (accepting).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abuse of property insurance (accepting).

## COMMENT

1. See § 18-13-119.5(4), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:371 (defining “thing of value”).

13:40

**Unlawful Transportation or Storage of Drip Gasoline**

The elements of the crime of unlawful transportation or storage of drip gasoline are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was not a producer, refiner, pipeline company, or owner or operator of a natural gas processing plant, or an authorized agent thereof, and
4. transported or stored drip gasoline in this state,
5. without having in his [her] possession a written instrument issued and signed by a licensed seller of gasoline, stating the names and addresses of the seller and purchaser, the date of sale, and the amount sold and paid for such drip gasoline, or a copy of a contract authorizing the loading and transportation of the drip gasoline.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful transportation or storage of drip gasoline.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful transportation or storage of drip gasoline.

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### COMMENT

1. *See* § 18-13-120(2), C.R.S. 2019.

2. *See* Instruction F:108.5 (defining “drip gasoline”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 13:41

#### Unlawful Use of Drip Gasoline

**The elements of the crime of unlawful use of drip gasoline are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. used drip gasoline in a motor vehicle operated on a highway of this state.**
- [4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful use of drip gasoline.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful use of drip gasoline.**

### COMMENT

1. *See* § 18-13-120(3), C.R.S. 2019.

2. *See* Instruction F:108.5 (defining “drip gasoline”); Instruction



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F:236 (defining “motor vehicle”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

13:42

### **Furnishing Cigarettes, Tobacco Products, or Nicotine Products to a Minor (Unlawful Sale)**

The elements of the crime of furnishing a cigarette, tobacco product, or nicotine product to a minor (unlawful sale) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. gave, sold, distributed, dispensed, or offered for sale a cigarette, tobacco product, or nicotine product to any person who was under eighteen years of age,
- [4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of furnishing a cigarette, tobacco product, or nicotine product to a minor (unlawful sale).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of furnishing a cigarette, tobacco product, or nicotine product to a minor (unlawful sale).

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### COMMENT

1. See § 18-13-121(1)(a), C.R.S. 2019.

2. See Instruction F:53.5 (defining “cigarette, tobacco product, or nicotine product”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Section 18-13-121(1)(d), C.R.S. 2019, establishes an affirmative defense where the defendant “was presented with and reasonably relied upon a document that identified the [buyer] as being eighteen years of age or older. However, the Committee has not drafted a model affirmative defense instruction.

### 13:43

#### **Furnishing Cigarettes, Tobacco Products, or Nicotine Products to a Minor (Identification)**

**The elements of the crime of furnishing cigarettes, tobacco products, or nicotine products to a minor (identification) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. gave, sold, distributed, dispensed, or offered to sell to an individual a cigarette, tobacco product, or nicotine product,
4. without first requesting from the individual and examining a government-issued photographic identification that established that the individual was eighteen years of age or older,
5. and the transaction was not a face-to-face transaction where the individual appeared older than thirty years of age.

[6. and that the defendant’s conduct was not



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legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of furnishing cigarettes, tobacco products, or nicotine products to a minor (identification).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of furnishing cigarettes, tobacco products, or nicotine products to a minor (identification).

COMMENT

1. See § 18-13-121(1)(b), C.R.S. 2019.

2. See Instruction F:53.5 (defining “cigarette, tobacco product, or nicotine product”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

13:44

**Purchase or Attempted Purchase of Cigarettes, Tobacco Products, or Nicotine Products by a Minor**

The elements of the crime of purchase or attempted purchase of cigarettes, tobacco products, or nicotine products by a minor are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was under eighteen years of age, and



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4. purchased or attempted to purchase any cigarettes, tobacco products, or nicotine products.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of purchase or attempted purchase of cigarettes, tobacco products, or nicotine products by a minor.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of purchase or attempted purchase of cigarettes, tobacco products, or nicotine products by a minor.

## COMMENT

1. *See* § 18-13-121(2)(a), C.R.S. 2019.

2. *See* Instruction F:53.5 (defining “cigarette, tobacco product, or nicotine product”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Section 18-13-121(2)(b), C.R.S. 2019, establishes an exemption “if the person under eighteen years of age was acting at the direction of an employee of a governmental agency authorized to enforce or ensure compliance with laws relating to the prohibition of the sale of cigarettes, tobacco products, or nicotine products to minors.” However, the Committee has not drafted a model affirmative defense instruction.

4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

13:45

**Illegal Possession or Consumption of Ethyl Alcohol by an Underage Person**

The elements of the crime of illegal possession or consumption of ethyl alcohol by an underage person are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was under twenty-one years of age, and
4. possessed or consumed ethyl alcohol.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of illegal possession or consumption of ethyl alcohol by an underage person.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of illegal possession or consumption of ethyl alcohol by an underage person.

**COMMENT**

1. See § 18-13-122(3)(a), C.R.S. 2019 (specifying that this is a strict liability offense).

2. See Instruction F:129.5 (defining “ethyl alcohol”); Instruction F:281.2 (defining “possession of ethyl alcohol”).

3. See Instruction H:67.4 (affirmative defense of “reporting an emer-



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agency” (illegal possession or consumption of ethyl alcohol by an under-age person)); *see also* Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event,” based on section 18-1-711(3)(h), C.R.S. 2019, and incorporated by section 18-13-122(3)(a)).

4. Section 18-13-122(5), C.R.S. 2019, establishes affirmative defenses for certain specified circumstances (such as possession or consumption of ethyl alcohol while under supervision on private property, or while enrolled in an educational program). However, the Committee has not drafted model affirmative defense instructions. *See also* § 18-13-122(2)(a), (g) (defining the term “private property,” and the subsidiary term “establishment,” for purposes of section 18-13-122(5)(a)).

5. Section 18-13-122(6), C.R.S. 2019, establishes an exemption for possession or consumption of ethyl alcohol in conjunction with constitutionally protected “religious purposes.” However, the Committee has not drafted a model affirmative defense instruction.

### 13:46

#### **Illegal Possession or Consumption of Marijuana by an Underage Person**

**The elements of the crime of illegal possession or consumption of marijuana by an underage person are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was under twenty-one years of age, and**
- 4. possessed one ounce or less of marijuana or consumed marijuana.**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of illegal possession or consumption of marijuana by an underage person.**



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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of illegal possession or consumption of marijuana by an underage person.**

### COMMENT

1. *See* § 18-13-122(3)(b), C.R.S. 2019 (specifying that this is a strict liability offense).

2. *See* Instruction F:208.5 (defining “marijuana” (possession or consumption by underage person)); Instruction F:281.3 (defining “possession of marijuana”).

3. *See* Instruction H:67.4 (affirmative defense of “reporting an emergency” (illegal possession or consumption of marijuana by an underage person)); Instruction H:68 (affirmative defense of “medical marijuana”); *see also* Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event,” based on section 18-1-711(3)(h), C.R.S. 2019).

4. Section 18-13-122(6), C.R.S. 2019, establishes an exemption for possession or consumption of marijuana in conjunction with constitutionally protected “religious purposes.” However, the Committee has not drafted a model affirmative defense instruction.

**13:47**

### **Illegal Possession of Marijuana Paraphernalia by an Underage Person**

**The elements of the crime of illegal possession of marijuana paraphernalia by an underage person are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was under twenty-one years of age, and**
- 4. possessed marijuana paraphernalia, and**
- 5. knew or reasonably should have known,**

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**6. that the drug paraphernalia could be used in circumstances in violation of the laws of this state.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of illegal possession or consumption of marijuana paraphernalia by an underage person.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of illegal possession or consumption of marijuana paraphernalia by an underage person.**

### COMMENT

1. *See* § 18-13-122(3)(c), C.R.S. 2019 (specifying that this is a strict liability offense).

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:209 (defining “marijuana accessories,” which, pursuant to section 18-13-122(2)(d), C.R.S. 2019, is synonymous with “marijuana paraphernalia”); Instruction F:281.3 (defining “possession of marijuana”).

3. *See* Instruction H:67.4 (affirmative defense of “reporting an emergency” (illegal possession of marijuana paraphernalia by an underage person)); Instruction H:68 (affirmative defense of “medical marijuana”); *see also* Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event,” based on section 18-1-711(3)(h), C.R.S. 2019).

4. Although section 18-13-122(3)(c) provides that this is a strict liability offense, it also requires that the defendant “knows or reasonably should know that the drug paraphernalia could be used in circumstances in violation of the laws of this state.” The Committee expresses no opinion on how to reconcile this knowledge requirement with the provision that this is a strict liability offense.

5. Section 18-13-122(6), C.R.S. 2019, establishes an exemption for



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possession or consumption of marijuana in conjunction with constitutionally protected "religious purposes." However, the provision is not explicitly applicable to the offense of possession of marijuana *paraphernalia* by an underage person.

### 13:48.SP

#### **Illegal Possession or Consumption of Ethyl Alcohol or Marijuana, or Illegal Possession of Marijuana Paraphernalia, by an Underage Person—Special Instruction (Inferences As to Possession, Consumption, and Contents)**

[Evidence that the defendant was under the age of twenty-one years and possessed or consumed ethyl alcohol or marijuana or possessed marijuana paraphernalia anywhere in this state gives rise to a permissible inference of possession or consumption.]

[Evidence that the defendant was under the age of twenty-one years and manifested any of the characteristics commonly associated with [ethyl alcohol intoxication or impairment] [marijuana impairment] while present anywhere in this state gives rise to a permissible inference of consumption.]

[Evidence of a label which identifies the contents of any bottle, can, or other container as "beer", "ale", "malt beverage", "fermented malt beverage", "malt liquor", "wine", "champagne", "whiskey" or "whisky", "gin", "vodka", "tequila", "schnapps", "brandy", "cognac", "liqueur", "cordial", "alcohol", or "liquor" gives rise to a permissible inference that the contents of the bottle, can, or other container was composed in whole or in part of ethyl alcohol.]

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

**You must bear in mind that the prosecution**



always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

COMMENT

1. See § 18-13-122(8), (9), C.R.S. 2019.

2. See *People in re R.M.D.*, 829 P.2d 852, 854 (Colo. 1992) (construing a “prima facie” proof provision as establishing a permissible inference); *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

13:49

**Unlawful Administration of Gamma Hydroxybutyrate (Ghb) or Ketamine**

The elements of the crime of unlawful administration of gamma hydroxybutyrate (GHB) or ketamine are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. caused or attempted to cause any other person to unknowingly consume or receive the direct administration of gamma hydroxybutyrate (GHB) or ketamine or the immediate chemical precursors or chemical analogs for either of such substances.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements be-

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yond a reasonable doubt, you should find the defendant guilty of unlawful administration of gamma hydroxybutyrate (GHB) or ketamine.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful administration of gamma hydroxybutyrate (GHB) or ketamine.

### COMMENT

1. See § 18-13-123(3), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”).
3. Section 18-13-123(4), C.R.S. 2019, establishes exemptions from liability for usage related to bona fide medical needs and the euthanizing of animals. However, the Committee has not drafted model affirmative defense instructions.
4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

13:50

### Dissemination of False Information to Obtain Hospital Admittance or Care

The elements of the crime of dissemination of false information to obtain hospital [admittance] [care] are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. provided false identifying information,

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5. for the purpose of either obtaining admittance to, or health services from, a hospital or evading an obligation by the defendant to make payment to the hospital for services provided at the defendant's request.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of dissemination of false information to obtain hospital [admittance] [care].

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of dissemination of false information to obtain hospital [admittance] [care].

### COMMENT

1. See § 18-13-124(1), C.R.S. 2019.

2. See Instruction F:175.3 (defining "identifying information (hospital admittance)"; Instruction F:195 (defining "knowingly").

13:51

### Unauthorized Trading in Telephone Records (Procurement)

The elements of the crime of unauthorized trading in telephone records (procurement) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. without lawful authorization,



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4. knowingly,
5. procured or attempted to procure a telephone record.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized trading in telephone records (procurement).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized trading in telephone records (procurement).

### COMMENT

1. See § 18-13-125(1)(a), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:196.4 (defining “lawful authorization” (unauthorized trading in telephone records)); Instruction F:285.9 (defining “procure”); Instruction F:364.7 (defining “telephone record”).

3. Sections 18-13-125(3), (5), C.R.S. 2019, establish exemptions from liability, under specified circumstances, for law enforcement and telecommunications providers. However, the Committee has not drafted model affirmative defense instructions.

4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

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13:52

### Unauthorized Trading in Telephone Records (Buying or Selling)

The elements of the crime of unauthorized trading in telephone records (buying or selling) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. without lawful authorization,
5. sold, bought, offered to sell, or offered to buy a telephone record.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized trading in telephone records (buying or selling).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized trading in telephone records (buying or selling).

#### COMMENT

1. See § 18-13-125(1)(b), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:196.4 (defining “lawful authorization” (unauthorized trading in telephone records)); Instruction F:364.7 (defining “telephone record”).
3. Sections 18-13-125(3), (5), C.R.S. 2019, establish exemptions

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from liability, under specified circumstances, for law enforcement and telecommunications providers. However, the Committee has not drafted model affirmative defense instructions.

**13:53**

### **Unauthorized Trading in Telephone Records (Possession)**

**The elements of the crime of unauthorized trading in telephone records (possession) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. possessed a telephone record,**
- 4. with the intent,**
- 5. to use such record, or information contained in such record, to harm another person,**
- 6. without lawful authorization.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized trading in telephone records (possession).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized trading in telephone records (possession).**

#### **COMMENT**

1. See § 18-13-125(1)(c), C.R.S. 2019.



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2. See Instruction F:185 (defining “with intent”); Instruction F:196.4 (defining “lawful authorization” (unauthorized trading in telephone records)); Instruction F:281 (defining “possession”); Instruction F:364.7 (defining “telephone record”).

3. Sections 18-13-125(3), (5), C.R.S. 2019, establish exemptions from liability, under specified circumstances, for law enforcement and telecommunications providers. However, the Committee has not drafted model affirmative defense instructions.

**13:54**

### **Unauthorized Trading in Telephone Records (Receipt)**

**The elements of the crime of unauthorized trading in telephone records (receipt) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. without lawful authorization,**
- 4. received a telephone record of a resident of Colorado,**
- 5. knowing,**
- 6. that such record was obtained without lawful authorization or by fraud or deception.**

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized trading in telephone records (receipt).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**

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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized trading in telephone records (receipt).**

### COMMENT

1. See § 18-13-125(1)(d), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:196.4 (defining “lawful authorization” (unauthorized trading in telephone records)); Instruction F:364.7 (defining “telephone record”).
3. Sections 18-13-125(3), (5), C.R.S. 2019, establish exemptions from liability, under specified circumstances, for law enforcement and telecommunications providers. However, the Committee has not drafted model affirmative defense instructions.

**13:55**

### Locating Protected Persons

**The elements of the crime of locating a protected person are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. accepted money or other form of compensation to assist a restrained person from discovering the location of a protected person,
4. when the defendant knew or reasonably should have known,
5. that the restrained person was subject to a court order prohibiting contact with the protected person.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of locating a protected person.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of locating a protected person.

COMMENT

1. See § 18-13-126(1)(a), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:293.5 (defining “protected person”); Instruction F:294.3 (defining “protection order” (locating protected persons)); Instruction F:319 (defining “restrained person”).

3. Section 18-13-126(1)(b), C.R.S. 2019, establishes exemptions from criminal liability for specified lawful activities conducted in connection with court proceedings. However, the Committee has not drafted model affirmative defense instructions. Similarly, the Committee has not drafted a model instruction for the affirmative defense established by section 18-13-126(3) (timely verification of no protection order).

4. In the third element, the word “from” is included exactly as it appears in section 18-13-126(1)(a), C.R.S. 2019. However, it appears the element could be made more comprehensible, without altering its meaning, by substituting the word “in.”

13:56

Smuggling of Humans

COMMENT

1. In *Fuentes-Espinoza v. People*, 2017 CO 98, 408 P.3d 445, the Colorado Supreme Court deemed this statute unconstitutional because it is preempted by federal law. Therefore, the Committee removed this instruction in 2018.

13:57

Prohibited Bail Bond Activities (Selection of an Attorney)

The elements of the crime of prohibited bail bond activity (selection of an attorney) are:



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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was engaged in the business of writing bail bonds, and
  4. specified, suggested, or advised the employment of a particular attorney to represent the licensee's principal.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (selection of an attorney).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (selection of an attorney).

### COMMENT

1. See § 18-13-130(1)(a), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute does not define the term “licensee’s principal.” In the Committee’s view, however, this term likely refers to the person for whom the defendant surety posted the bond. See *People v. Joss*, 534 P.2d 358, 360–61 (Colo. App. 1975) (“A bail bond surety owes the court a duty to make some effort to see that *its principal* complies with orders of the court . . . but the fact that a surety has made substantial efforts

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to locate a *principal* does not compel the granting of any relief.” (omission in original) (emphases added) (quoting *United States v. Kelley*, 38 F.R.D. 320, 322 (D. Colo. 1965)); *see also* *Tassian v. People*, 731 P.2d 672, 673 n.2 (Colo. 1987) (describing an earlier version of the statute as criminalizing the behavior of “a bail bonds *licensee*” (emphasis added)). The court may wish to define the term for the jury.

13:58

### Prohibited Bail Bond Activities (Payment to a Prohibited Person)

The elements of the crime of prohibited bail bond activity (payment to a prohibited person) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was engaged in the business of writing bail bonds, and
4. paid a fee or rebate or gave or promised anything of value,
5. to a jailer, peace officer, clerk, deputy clerk, an employee of a court, district attorney or district attorney’s employees, or any person who had power to arrest or to hold a person in custody.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (payment to a prohibited person).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more

## COLORADO JURY INSTRUCTIONS—CRIMINAL

**of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (payment to a prohibited person).**

### COMMENT

1. See § 18-13-130(1)(b), C.R.S. 2019.

2. See Instruction F:371 (defining “thing of value”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**13:59**

### **Prohibited Bail Bond Activities (Payment to an Attorney)**

**The elements of the crime of prohibited bail bond activity (payment to an attorney) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was engaged in the business of writing bail bonds, and**
- 4. paid a fee or rebate or gave anything of value to an attorney in bail bond matters,**
- 5. and did not do so in defense of any action on a bond or as counsel to represent the person who wrote or posted the bond or the person’s representative or employees.**

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements be-**



yond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (payment to an attorney).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (payment to an attorney).

COMMENT

1. See § 18-13-130(1)(c), C.R.S. 2019.

2. See Instruction F:371 (defining “thing of value”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

13:60

**Prohibited Bail Bond Activities (Payment to Person On Bond)**

The elements of the crime of prohibited bail bond activity (payment to person on bond) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was engaged in the business of writing bail bonds, and
4. paid a fee or rebate or gave or promised to give anything of value,
5. to the person on whose bond the defendant was surety.
- [6. and that the defendant’s conduct was not

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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (payment to person on bond).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (payment to person on bond).**

**COMMENT**

1. *See* § 18-13-130(1)(d), C.R.S. 2019.

2. *See* Instruction F:371 (defining “thing of value”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**13:61**

**Prohibited Bail Bond Activities (Accepting Anything of Value)**

**The elements of the crime of prohibited bail bond activity (accepting anything of value) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was engaged in the business of writing bail bonds, and**
- 4. accepted anything of value other than the fee or premium on the bond,**

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**5. from a person on whose bond the defendant was surety or from others on behalf of the person.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (accepting anything of value).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (accepting anything of value).**

### COMMENT

1. *See* § 18-13-130(1)(e), C.R.S. 2019.

2. *See* Instruction F:371 (defining “thing of value”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Section 18-13-130(1)(e)(I) to (IV), C.R.S. 2019, establishes an exception for a producer or agent where collateral security or other indemnity is pledged under specified circumstances. Because the four criteria that constitute this exception appear in subsections that are separated from the definition of the offense, the Committee has not included these criteria as negative elements required to be disproved by the prosecution. *See* *People v. Reed*, 932 P.2d 842, 844 (Colo. App. 1996) (“When an exception is included in a statutory section defining the elements of the offense, it is generally the burden of the prosecution to prove that the exception does not apply. However, when an exception is found in a separate clause or is clearly disconnected from the definition of the offense, it is the defendant's burden to claim it as an affirmative defense.”). Nor has the Committee drafted a model affirmative defense instruction.



13:62

**Prohibited Bail Bond Activities (Induce to Commit Crime)**

The elements of the crime of prohibited bail bond activity (induce to commit crime) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was engaged in the business of writing bail bonds, and
4. coerced, suggested, aided and abetted, offered promise of favor, or threatened any person on whose bail bond the defendant was surety, or offered to become surety to induce that person to commit any crime.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (induce to commit crime).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (induce to commit crime).

**COMMENT**

1. See § 18-13-130(1)(f), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 ("Although no culpable mental state is expressly designated in a statute defining an offense, a culpable

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mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

13:63

### **Prohibited Bail Bond Activities (Posting Bond While Restricted)**

The elements of the crime of prohibited bail bond activity (posting bond while restricted) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was engaged in the business of writing bail bonds, and
4. posted a bail bond in any court of record in this state,
5. [while his [her] name was on a board established by a court to publicly post the name of compensated sureties who were prohibited from posting bail bonds] [under any circumstance where the defendant had failed to pay a bail forfeiture judgment after all applicable stays of execution had expired and the bond had not been exonerated or discharged].
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (posting bond while restricted).

After considering all the evidence, if you decide

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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (posting bond while restricted).**

### COMMENT

1. *See* § 18-13-130(1)(g), C.R.S. 2019.

2. *See also* § 16-4-114(5), C.R.S. 2019; § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**13:64**

### **Prohibited Bail Bond Activities (Failure to Return)**

**The elements of the crime of prohibited bail bond activity (failure to return) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was engaged in the business of writing bail bonds, and**
- 4. failed to return any nonforfeited collateral or security, other than the bond fee, within fourteen days after receipt of a copy of the court order that resulted in a release of the bond by the court, and**
- 5. the collateral did not also secure another obligation, premium payment plan, or bail recovery fee, and**
- 6. [three] [six] years had not yet elapsed from the date the bond was posted when the court released the bond.**
- [7. and that the defendant’s conduct was not**



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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (failure to return).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (failure to return).**

### COMMENT

1. *See* § 18-13-130(1)(h), C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. For the sixth element, the number of years hinges on whether the court granted an extension. *See* § 18-13-130(1)(h)(II), C.R.S. 2019.

4. The statute also provides for culpability where, “if the [person for whom the bond was posted] fails to appear and the [defendant] surety is exonerated, [the defendant surety] fails to return the collateral to the indemnitor upon request within fourteen days *after the three-year period.*” § 18-13-130(1)(h), C.R.S. 2019 (emphasis added). The statute, however, does not define “the three-year period.” Arguably, this time period refers to section 16-4-110(1)(e), C.R.S. 2019, which provides that a surety shall be exonerated if “three years have elapsed from the posting of the bond.” But it is unclear how this could be reconciled with section 18-13-130(1)(h)(II), which provides that a surety is *not* culpable if “[t]he later of three years or, if the court grants an extension, six years[,] have elapsed from the date the bond was posted.” In essence, the statute appears to both (1) provide for culpability following the expiration of a three-year period, and (2) provide for an exemption from culpability following the expiration of that same three-year period. Accordingly, the Committee has not drafted a model instruction for this aspect of the offense.

13:65

**Prohibited Bail Bond Activities (Accepting Anything of Value As Indemnitor)**

The elements of the crime of prohibited bail bond activity (accepting anything of value as indemnitor) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was engaged in the business of writing bail bonds, and
4. accepted anything of value, other than the premium,
5. from a person on whose bond the defendant was indemnitor or from another on behalf of the principal,
6. and accepting the thing of value was not authorized by [insert relevant provision from title 10, C.R.S.].

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (accepting anything of value as indemnitor).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail

## MISCELLANEOUS OFFENSES

**bond activity (accepting anything of value as indemnitor).**

### COMMENT

1. See § 18-13-130(1)(i), C.R.S. 2019.

2. See Instruction F:371 (defining “thing of value”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute does not define the term “principal.” In the Committee’s view, however, this term appears to refer to the person on whose bond the defendant was indemnitor. See *People v. Joss*, 534 P.2d 358, 360–61 (Colo. App. 1975) (“A bail bond surety owes the court a duty to make some effort to see that *its principal* complies with orders of the court . . . but the fact that a surety has made substantial efforts to locate a *principal* does not compel the granting of any relief.” (omission in original) (emphases added) (quoting *United States v. Kelley*, 38 F.R.D. 320, 322 (D. Colo. 1965))). The court may wish to define the term for the jury.

### 13:66

#### **Prohibited Bail Bond Activities (Blank Bail Bonds)**

**The elements of the crime of prohibited bail bond activity (blank bail bonds) are:**

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was engaged in the business of writing bail bonds, and
  4. signed or countersigned blank bail bonds.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**



## COLORADO JURY INSTRUCTIONS—CRIMINAL

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (blank bail bonds).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (blank bail bonds).

### COMMENT

1. *See* § 18-13-130(1)(j), C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 13:67

#### Prohibited Bail Bond Activities (Multiple Bonds)

The elements of the crime of prohibited bail bond activity (multiple bonds) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was engaged in the business of writing bail bonds, and
4. had more than one bond posted at one time in one case on behalf of one person.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide

## MISCELLANEOUS OFFENSES

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (multiple bonds).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (multiple bonds).

### COMMENT

1. *See* § 18-13-130(1)(k), C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

13:68

### Prohibited Bail Bond Activities (No Receipt)

The elements of the crime of prohibited bail bond activity (no receipt) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was engaged in the business of writing bail bonds, and
4. failed to issue to the person from whom collateral or security was taken a receipt that included a description of the collateral or security when it was taken into custody.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

## COLORADO JURY INSTRUCTIONS—CRIMINAL

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited bail bond activity (no receipt).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited bail bond activity (no receipt).

### COMMENT

1. See § 18-13-130(1)(l), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

## CHAPTER 14

### UNLAWFUL NOTICE AT A HOTEL FACILITY

#### CHAPTER COMMENTS

1. Section 18-14-104, C.R.S. 2019, provides for liability for an owner who “violates, or causes to be violated, any of the provisions of this article.” Because the statutes in this chapter speak primarily in affirmative language, *see, e.g.*, § 18-14-102(1), C.R.S. 2019 (providing that “[t]here shall be displayed at each hotel facility” certain signage), the Committee has crafted instructions that pertain to a defendant who “fails” to comply with—or “causes to fail” to comply with—such required conduct.

2. The Committee added this chapter in 2016.

14:01

#### Unlawful Notice At a Hotel Facility (Failure to Display)

The elements of the crime of unlawful notice at a hotel facility (failure to display) are:



## UNLAWFUL NOTICE AT A HOTEL FACILITY

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an owner, agent, lessee, or manager of a hotel facility, and
4. failed to display, or caused a failure to display,
5. in a conspicuous place,
6. at the hotel facility in its office or place of guest registration,
7. a sign which included, in letters and figures of the same size and prominence, the following information: the number of apartments, rooms, or units in the hotel facility and the rates charged for each; whether the rates quoted were for single or multiple occupancy where such fact affected the rates charged; and the dates during which rates were in effect.

[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful notice at a hotel facility (failure to display).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful notice at a hotel facility (failure to display).

### COMMENT

1. See §§ 18-14-102(1), 18-14-104, C.R.S. 2019.

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2. See Instruction F:173.5 (defining “hotel facility”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

14:02

### **Unlawful Notice At a Hotel Facility (Failure to Post)**

The elements of the crime of unlawful notice at a hotel facility (failure to post) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an owner, agent, lessee, or manager of a hotel facility, and
4. failed to post, or caused a failure to post,
5. in a plainly legible fashion,
6. in a conspicuous place,
7. in, or at, each room, unit, and apartment of the hotel facility,
8. a sign showing: the maximum amount charged for occupancy and the maximum amount per person if the rate varied with the number of occupants; the amount charged for extra conveniences, more complete accommodations, or additional furnishings; and the dates during the year when such charges prevailed.
- [9. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide

## UNLAWFUL NOTICE AT A HOTEL FACILITY

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful notice at a hotel facility (failure to post).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful notice at a hotel facility (failure to post).

### COMMENT

1. See §§ 18-14-102(2), 18-14-104, C.R.S. 2019.

2. See Instruction F:173.5 (defining “hotel facility”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

14:03

### Unlawful Notice At a Hotel Facility (Signage With Unavailable Rate)

The elements of the crime of unlawful notice at a hotel facility (signage with unavailable rate) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an owner, agent, lessee, or manager of a hotel facility, and
4. displayed or caused to be displayed,
5. a sign which could have been seen from a public highway or street, and which included in dollars and cents a statement relating to the rates charged at a hotel facility, and



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**6. accommodations were not available at the rates quoted at all times such sign was posted.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful notice at a hotel facility (signage with unavailable rate).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful notice at a hotel facility (signage with unavailable rate).**

**COMMENT**

1. See §§ 18-14-103(1), 18-14-104, C.R.S. 2019.

2. See Instruction F:171 (defining “highway”); Instruction F:173.5 (defining “hotel facility”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**14:04**

**Unlawful Notice At a Hotel Facility (Incomplete or Inadequate Form of Advertisement)**

**The elements of the crime of unlawful notice at a hotel facility (incomplete or inadequate form of advertisement) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**

## **UNLAWFUL NOTICE AT A HOTEL FACILITY**

**3. was an owner, agent, lessee, or manager of a hotel facility, and**

**4. published or caused to be published,**

**5. an advertisement which included in dollars and cents a statement relating to rates charged at a hotel facility, and**

**6. such advertisement did not include in letters or figures of similar size and prominence: the number of apartments or rooms in said hotel facility at the published rates; whether the rates quoted were for single or multiple occupancy where such fact affected the rates charged; the dates during which such rates were in effect; and an indication as to whether there were other rates in effect in said hotel facility, and**

**7. the advertisement was not an advertisement or listing in a guide or directory which was published by a nonprofit hotel, motel, motor court, or apartment organization or similar association.**

**[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful notice at a hotel facility (incomplete or inadequate form of advertisement).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful notice at a hotel facility (incomplete or inadequate form of advertisement).**



## COLORADO JURY INSTRUCTIONS—CRIMINAL

### COMMENT

1. See §§ 18-14-103(2), 18-14-104, C.R.S. 2019.

2. See Instruction F:173.5 (defining “hotel facility”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

14:05

### Unlawful Notice At a Hotel Facility (False or Misleading)

The elements of the crime of unlawful notice at a hotel facility (false or misleading) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an owner, agent, lessee, or manager of a hotel facility, and
4. published or displayed, or caused to be published or displayed,
5. any sign with regard to any hotel facility which could have been seen from a public highway or street and which contained any advertisement that contained false or misleading statements as to any matter whatsoever.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful notice at a hotel facility (false or misleading).



## UNLAWFUL LENDING PRACTICES

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful notice at a hotel facility (false or misleading).

### COMMENT

1. See §§ 18-14-103(3), § 18-14-104, C.R.S. 2019.
2. See Instruction F:171 (defining “highway”); Instruction F:173.5 (defining “hotel facility”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

## CHAPTER 15

## UNLAWFUL LENDING PRACTICES

### CHAPTER COMMENTS

1. The Committee added this chapter in 2016.

15:01

### Extortionate Extension of Credit

The elements of the crime of extortionate extension of credit are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. made an extension of credit in any amount regardless of the loan finance charge, and
4. it was the understanding of the defendant and the debtor at the time the extension of credit was made that delay in making repayment or failure to make repayment would result in the use of extortionate means of collection.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of extortionate extension of credit.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of extortionate extension of credit.

#### COMMENT

1. See § 18-15-102, C.R.S. 2019.

2. See Instruction F:57.2 (defining “collect”); Instruction F:89.7 (defining “debtor”); Instruction F:135.5 (defining “extend credit”); Instruction F:136.5 (defining “extortionate means”); Instruction F:199.2 (defining “loan finance charge”); Instruction F:311.7 (defining “repayment”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. For the third element, the Committee has included the language that reads “in any amount regardless of the loan finance charge” because it appears in the statute. See § 18-15-102. The Committee notes, however, that this language is arguably superfluous, as to prove this element, the prosecution need only prove that the defendant “made an extension of credit.” Rather, this language presumably clarifies that a defendant may not claim as an affirmative defense that the extension of credit was de minimis.

#### 15:02.SP

#### Extortionate Extension of Credit—Special Instruction (Inference That Credit Is Extortionate)

Evidence of all of the following gives rise to a permissible inference that an extension of credit was extortionate:



## UNLAWFUL LENDING PRACTICES

1. the extension of credit was made with a loan finance charge in excess of that established for criminal usury,
2. at the time credit was extended, the debtor reasonably believed that one or more extensions of credit by the defendant had been collected or attempted to be collected by extortionate means or the nonrepayment thereof had been punished by extortionate means, and
3. upon the making of the extension of credit, the total of the extensions of credit by the defendant to the debtor then outstanding, including any unpaid interest or similar charges, exceeded one hundred dollars.

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is warranted by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

### COMMENT

1. See § 18-15-103(2), C.R.S. 2019.

2. See Instruction F:57.2 (defining “collect”); Instruction F:78.5 (defining “creditor”); Instruction F:89.7 (defining “debtor”); Instruction F:135.5 (defining “extend credit”); Instruction F:136.5 (defining “extortionate means”); Instruction F:199.2 (defining “loan finance charge”); Instruction 15:03 (criminal usury).

3. Although the statute speaks in terms of a presumption, the concept should be explained as a permissible inference. See *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

4. See also § 18-15-103(4), C.R.S. 2019 (“Whether evidence intro-



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duced under [section 18-15-103(2)] giving rise to the presumption that the extension of credit was extortionate is sufficient to establish the guilt of the defendant beyond a reasonable doubt, if such evidence is not disputed, is a question to be determined by the jury under proper instructions or by the court if no jury trial is had. Where there is evidence tending to show the innocence of the transaction, the issue of whether the extension of credit was extortionate shall be submitted to the jury, if trial is to a jury, unless the court is satisfied that the evidence as a whole clearly negates the presumed offense.”).

**15:03**

### **Criminal Usury**

**The elements of the crime of usury are:**

- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. knowingly,**
  - 4. charged, took, or received any money or other property as a loan finance charge,**
  - 5. where the charge exceeded an annual percentage rate of forty-five percent or the equivalent for a longer or shorter period.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of usury.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of usury.**

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### COMMENT

1. *See* § 18-15-104(1), C.R.S. 2019.
2. *See* Instruction F:195 (defining “knowingly”); Instruction F:199.2 (defining “loan finance charge”).
3. *See* Instruction H:67.6 (affirmative defense of “rate not excessive”).
4. Section 18-15-104(4), C.R.S. 2019, includes exemptions for several types of lending practices. However, the Committee has not drafted model affirmative defense instructions.

**15:04**

### **Financing Extortionate Extensions of Credit**

**The elements of the crime of financing an extortionate extension of credit are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. advanced money or property, whether as a gift, a loan, or an investment,**
- 5. pursuant to a partnership or profit-sharing agreement, or otherwise,**
- 6. to any person, with reasonable grounds to believe that it was the intention of the person to whom the advance was made to use the money or property, directly or indirectly, for the purpose of making an extortionate extension of credit.**

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**

## COLORADO JURY INSTRUCTIONS—CRIMINAL

**the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of financing an extortionate extension of credit.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of financing an extortionate extension of credit.**

### COMMENT

1. *See* § 18-15-105, C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction 15:01 (extortionate extension of credit); *see also* Instruction 15:02.SP (extortionate extension of credit - special instruction (inference that credit is extortionate)).

3. The Committee has included the fifth element because its language appears in the statute. *See* § 18-15-105. The Committee notes, however, that the phrase “or otherwise” arguably renders the entire element superfluous, as the prosecution will never need to introduce evidence to prove this element. Similarly, the phrase “directly or indirectly” in the sixth element is arguably superfluous. Rather, these phrases presumably prevent a defendant from raising certain arguments as affirmative defenses (i.e., that the defendant was not acting pursuant to a profit-sharing agreement, or that the recipient of the advance intended to use the money only indirectly).

### 15:05

#### Financing Criminal Usury

**The elements of the crime of financing usury are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. advanced money or property, whether as a gift, a loan, or an investment,**



## UNLAWFUL LENDING PRACTICES

5. pursuant to a partnership or profit-sharing agreement, or otherwise,

6. to any person, with reasonable grounds to believe that it was the intention of the person to whom the advance was made to use the money or property, directly or indirectly, for the purpose of engaging in criminal usury.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of financing usury.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of financing usury.

### COMMENT

1. See § 18-15-106, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction 15:03 (criminal usury).

3. The Committee has included the fifth element because its language appears in the statute. See § 18-15-106. The Committee notes, however, that the phrase “or otherwise” arguably renders the entire element superfluous, as the prosecution will never need to introduce evidence to prove this element. Similarly, the phrase “directly or indirectly” in the sixth element is arguably superfluous. Rather, these phrases presumably prevent a defendant from raising certain arguments as affirmative defenses (i.e., that the defendant was not acting pursuant to a profit-sharing agreement, or that the recipient of the advance intended to use the money only indirectly).

15:06

**Collection of Extensions of Credit by Extortionate Means**

**The elements of the crime of collection of extensions of credit by extortionate means are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. participated in any way, or conspired to do so,**
- 5. in the use of any extortionate means to collect or to attempt to collect any extension of credit or to punish any person for the nonrepayment of any extension of credit.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of collection of extensions of credit by extortionate means.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of collection of extensions of credit by extortionate means.**

**COMMENT**

- 1. See § 18-15-107(1), (2), C.R.S. 2019.**
- 2. See Instruction F:57.2 (defining “collect”); Instruction F:135.5**

## UNLAWFUL LENDING PRACTICES

(defining “extend credit”); Instruction F:136.5 (defining “extortionate means”); Instruction F:195 (defining “knowingly”); Instruction G2:05 (conspiracy).

3. It may be appropriate for the court to draft a limiting instruction where evidence is admitted pursuant to section 18-15-107(3), C.R.S. 2019 (“In any prosecution under this section for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment of an extension of credit was punished by extortionate means.”); *see also* Instruction D:02 (evidence limited as to purpose).

4. In the absence of case law on point, the Committee takes no position on whether the word “attempt” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

15:07

## Possession or Concealment of Records of Criminal Usury

**The elements of the crime of possession or concealment of records of criminal usury are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. possessed or concealed any writing, paper, instrument, or article used to record criminally usurious transactions, and**
- [4. knew or had reasonable grounds to know that the contents had been used, were being used, or were intended to be used to conduct a criminally usurious transaction.]**
- [4. possessed or concealed such instruments with intent to aid, assist, or facilitate criminal usury.]**



## COLORADO JURY INSTRUCTIONS—CRIMINAL

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession or concealment of records of criminal usury.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession or concealment of records of criminal usury.**

### COMMENT

1. *See* § 18-15-108(1), C.R.S. 2019.
2. *See* Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction 15:03 (criminal usury).
3. The statute includes an exemption from criminal liability for possession of documents in conjunction with legal representation or judicial proceedings. *See* § 18-15-108(2), C.R.S. 2019. However, the Committee has not drafted model affirmative defense instructions.

### 15:08

#### **Collection of Prohibited Fees by a Loan Finder**

**The elements of the crime of collection of a prohibited fee by a loan finder are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a loan finder, and
4. charged or collected a fee from a borrower before the borrower actually received the agreed-upon loan.

## UNLAWFUL PRACTICES FOR PURCHASERS OF VALUABLE ARTICLES

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of collection of a prohibited fee by a loan finder.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of collection of a prohibited fee by a loan finder.**

### COMMENT

1. See § 18-15-109(2), C.R.S. 2019.

2. See Instruction F:38.7 (defining “borrower”); Instruction F:57.2 (defining “collect”); Instruction F:199.3 (defining “loan finder”); *see also* § 5-1-301(25), C.R.S. 2019 (defining “loan,” and incorporated by reference by section 18-15-109(1)(b), C.R.S. 2019); § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:67.8 (affirmative defense of “exempt person or organization”).

## CHAPTER 16

## UNLAWFUL PRACTICES FOR PURCHASERS OF VALUABLE ARTICLES

### CHAPTER COMMENTS

1. Each of the offenses in this chapter derives its criminal character from section 18-16-108, C.R.S. 2019, which provides as follows: “Any person who violates any of the provisions of [Article 16] commits a class 6 felony. Any person who knowingly gives false information with respect to the information required by sections 18-16-103 and 18-16-105 commits a class 6 felony.” In *Exotic Coins, Inc. v. Beacom*, 699 P.2d 930,



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947–48 (Colo. 1985), the supreme court held that the mens rea of “knowingly” applies to both sentences of section 18-16-108 (i.e., to every offense defined in Article 16). Therefore, the Committee has used a mens rea of “knowingly” for every instruction in this chapter.

2. Section 18-16-109, C.R.S. 2019, provides for exemptions from criminal liability for certain transactions by private collectors and certain purchases made exclusively in interstate commerce. However, the Committee has not drafted model affirmative defense instructions.

3. The Committee added this chapter in 2016.

**16:01**

### **Failure to Identify Seller of a Valuable Article**

**The elements of the crime of failure to identify seller of a valuable article are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. was a purchaser, and**
- 5. purchased a valuable article,**
- 6. without first securing at least one of the following types of identification from the seller: a valid Colorado driver’s license; an identification card issued by the Colorado Department of Revenue; a valid driver’s license, containing a picture, issued by another state; a military identification card; a valid passport; an alien registration card; or a nonpicture identification document issued by a state or federal government entity where the defendant also obtained a clear imprint of the seller’s right index finger.**
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**



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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to identify seller of a valuable article.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to identify seller of a valuable article.

### COMMENT

1. See §§ 18-16-103(1), 18-16-108, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:306.7 (defining “purchase”); Instruction F:306.8 (defining “purchaser”); Instruction F:330.5 (defining “seller”); Instruction F:385.3 (defining “valuable article”); *see also* § 42-2-302, C.R.S. 2019 (Department of Revenue’s rules for issuing Colorado identification cards).

16:02

### Purchasing a Valuable Article From a Minor

The elements of the crime of purchasing a valuable article from a minor are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a purchaser, and
5. purchased a valuable article from a person under the age of eighteen years.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of purchasing a valuable article from a minor.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of purchasing a valuable article from a minor.

**COMMENT**

1. See §§ 18-16-104, 18-16-108, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:306.7 (defining “purchase”); Instruction F:306.8 (defining “purchaser”); Instruction F:385.3 (defining “valuable article”).

**16:03**

**Failure to Maintain a Register (Requirements)**

The elements of the crime of failure to maintain a register (requirements) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a purchaser of valuable articles, and
- [5. failed to keep a register, in a permanent, well-bound book, that included the following information for each purchase: the signature of the seller; the name, address, and date of birth of the seller and his [her] driver’s license number or other I.D. number from [insert other allowed form of identification pursuant to section 18-16-103]; the date, time, and place of the purchase; and an accurate

## UNLAWFUL PRACTICES FOR PURCHASERS OF VALUABLE ARTICLES

and detailed account and description of each valuable article being purchased, including any trademark, identification number, serial number, model number, brand name, or other identifying marks on such articles and a description by weight and design of such articles.]

[5. failed to obtain a written and signed declaration of the seller's ownership which stated whether the valuable article was totally owned by the seller, how long the seller had owned the article, whether the seller or someone else found the article, and, if the article was found, the details of its finding.]

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to maintain a register (requirements).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to maintain a register (requirements).

### COMMENT

1. See §§ 18-16-105(1), (2), 18-16-108, C.R.S. 2019.

2. See Instruction F:195 (defining "knowingly"); Instruction F:306.7 (defining "purchase"); Instruction F:306.8 (defining "purchaser"); Instruction F:330.5 (defining "seller"); Instruction F:385.3 (defining "valuable article").



16:04

**Failure to Maintain a Register (Inspection)**

The elements of the crime of failure to maintain a register (inspection) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. was a purchaser of valuable articles, and
  5. failed to make his [her] register detailing the purchases of such articles available to any peace officer for inspection at any reasonable time.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to maintain a register (inspection).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to maintain a register (inspection).

**COMMENT**

1. See §§ 18-16-105(3), 18-16-108, C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:265.2 (defining “peace officer” (purchases of valuable articles)); Instruction F:306.7 (defining “purchase”); Instruction F:306.8 (defining “purchaser”); Instruction F:385.3 (defining “valuable article”).

### **Failure to Maintain a Register (Timeframe)**

The elements of the crime of failure to maintain a register (timeframe) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a purchaser of valuable articles, and
5. failed to keep a register detailing the purchases of such articles for at least three years after the last date of purchase of valuable articles described therein.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to maintain a register (timeframe).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to maintain a register (timeframe).

#### **COMMENT**

1. See §§ 18-16-105(4), 18-16-108, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:306.7 (defining “purchase”); Instruction F:306.8 (defining “purchaser”); Instruction F:385.3 (defining “valuable article”).

16:06

**Improper Holding of a Valuable Article**

**The elements of the crime of improper holding of a valuable article are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. was a purchaser, and**

**[5. failed to hold a valuable article, other than stamped and assayed gold or silver bullion or gold coins, within the jurisdiction of purchase for a period of thirty days from the date of purchase.]**

**[5. while holding a valuable article, other than stamped and assayed gold or silver bullion or gold coins, within the jurisdiction of purchase for a period of thirty days from the date of purchase, failed to hold the article separate and apart from any other transaction.]**

**[5. while holding a valuable article, other than stamped and assayed gold or silver bullion or gold coins, within the jurisdiction of purchase for a period of thirty days from the date of purchase, changed in form or altered the article in any way.]**

**[5. while holding a valuable article, other than stamped and assayed gold or silver bullion or gold coins, within the jurisdiction of purchase for a period of thirty days from the date of purchase, failed to permit a requesting law enforcement officer to inspect the article during the thirty-day period.]**



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**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper holding of a valuable article.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper holding of a valuable article.**

### COMMENT

1. See §§ 18-16-106, 18-16-108, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:306.7 (defining “purchase”); Instruction F:306.8 (defining “purchaser”); Instruction F:385.3 (defining “valuable article”).

3. In *Exotic Coins, Inc. v. Beacom*, 699 P.2d 930, 946 (Colo. 1985), the supreme court held that the word “bullion” was not unconstitutionally vague based on the following dictionary definition: “Gold or silver, considered merely as so much metal without regard to any value imparted by its form . . . specif., uncoined gold or silver, in the shape of bars, ingots, or the like” (alteration in original) (quoting *Merriam Webster's New International Dictionary* (2d ed. 1959)). Likewise, the court held that the term “assayed” was sufficiently definite, citing the same dictionary: “To assay is to examine to determine the metal's weight, measure, quality or other properties.” *Id.*

**16:07**

### Improper Transfer of Bullion or Coins

**The elements of the crime of improper transfer of bullion or coins are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**

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4. was a purchaser, and

5. failed to record the identity of any person to whom he [she] transferred any stamped and assayed gold or silver bullion or gold coins, or failed to record the date, time, and place of such transfer.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper transfer of bullion or coins.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper transfer of bullion or coins.

### COMMENT

1. See §§ 18-16-106(2), 18-16-108, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:306.8 (defining “purchaser”).

3. In *Exotic Coins, Inc. v. Beacom*, 699 P.2d 930, 946 (Colo. 1985), the supreme court held that the word “bullion” was not unconstitutionally vague based on the following dictionary definition: “Gold or silver, considered merely as so much metal without regard to any value imparted by its form . . . specif., uncoined gold or silver, in the shape of bars, ingots, or the like” (alteration in original) (quoting *Merriam Webster's New International Dictionary* (2d ed. 1959)). Likewise, the court held that the term “assayed” was sufficiently definite, citing the same dictionary: “To assay is to examine to determine the metal's weight, measure, quality or other properties.” *Id.*



UNLAWFUL PRACTICES FOR PURCHASERS OF VALUABLE  
ARTICLES

16:08

**Failure to File Required Report of Purchases of Valuable  
Articles (Local Law Enforcement Agency)**

The elements of the crime of failure to file required report of purchases of valuable articles (local law enforcement agency) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a purchaser of valuable articles, and

[5. failed to provide the local law enforcement agency, on a weekly basis, with two records, on a form provided by the local law enforcement agency, of all valuable articles purchased during the preceding week.]

[5. provided the local law enforcement agency with a form that failed to include [insert information required to be recorded in the purchaser's register pursuant to section 18-16-105, C.R.S. 2019], a physical description of the seller, or the dollar amount of the purchase.]

[5. failed to provide the local law enforcement agency with one copy of the seller's declaration of ownership.]

[5. provided to the local law enforcement agency a form detailing all valuable articles purchased during the preceding week that was not signed by [the seller] [the defendant] [the defendant's agent who participated in the purchase] at the time of purchase.]

[6. and that the defendant's conduct was not



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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to file required report of purchases of valuable articles (local law enforcement agency).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to file required report of purchases of valuable articles (local law enforcement agency).**

### COMMENT

1. See §§ 18-16-107(1), 18-16-108, C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:199.7 (defining “local law enforcement agency” (purchases of valuable articles)); Instruction F:306.7 (defining “purchase”); Instruction F:306.8 (defining “purchaser”); Instruction F:330.5 (defining “seller”); Instruction F:385.3 (defining “valuable article”).

**16:09**

### **Failure to File Required Report of Purchases of Valuable Articles (Seller’s Law Enforcement Agency)**

**The elements of the crime of failure to file required report of purchases of valuable articles (seller’s law enforcement agency) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was a purchaser of valuable articles, and

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ARTICLES

[5. failed to forward to the law enforcement agency having jurisdiction in the area where the seller resides, on a weekly basis, two records, on a form provided by the purchaser's local law enforcement agency, of all valuable articles purchased during the preceding week.]

[5. forwarded to the law enforcement agency having jurisdiction in the area where the seller resides a form that failed to include [insert information required to be recorded in the purchaser's register pursuant to section 18-16-105, C.R.S. 2019], a physical description of the seller, or the dollar amount of the purchase.]

[5. failed to forward to the law enforcement agency having jurisdiction in the area where the seller resides one copy of the seller's declaration of ownership.]

[5. forwarded to the law enforcement agency having jurisdiction in the area where the seller resides a form detailing all valuable articles purchased during the preceding week that was not signed by [the seller] [the defendant] [the defendant's agent who participated in the purchase] at the time of purchase.]

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to file required report of purchases of valuable articles (seller's law enforcement agency).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you



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**should find the defendant not guilty of failure to file required report of purchases of valuable articles (seller's law enforcement agency).**

### COMMENT

1. See §§ 18-16-107(2), 18-16-108, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:199.7 (defining “local law enforcement agency” (purchases of valuable articles)); Instruction F:306.7 (defining “purchase”); Instruction F:306.8 (defining “purchaser”); Instruction F:330.5 (defining “seller”); Instruction F:385.3 (defining “valuable article”).

3. Section 18-16-107(1) details certain reporting requirements for purchasers to their “local law enforcement agency.” See Instruction 16:08. That local law enforcement agency is defined by statute as “any marshal’s office, police department, or sheriff’s office with jurisdiction in the locality *in which the purchaser makes the purchase*” (emphasis added). In addition, section 18-16-107(2) provides that “[a] copy of such record and the seller’s declaration of ownership shall also be forwarded to the local law enforcement agency *having jurisdiction in the area where the seller resides*” (emphasis added). Thus, where subsection (1) requires the purchaser to file a particular form with his own (i.e., local) law enforcement agency, subsection (2) requires him to forward that form to the seller’s agency. Therefore, this instruction mirrors the prior instruction, except that it removes the word “local” before the phrase “law enforcement agency,” as this crime involves failure to properly report to the seller’s agency. Note, however, that the first bracketed alternative in the fifth element still contains the phrase “local law enforcement agency” because the purchaser obtains the form from his own agency rather than the seller’s.

### 16:10

#### **Giving False Information With Respect to the Purchase of a Valuable Article**

**The elements of the crime of giving false information with respect to the purchase of a valuable article are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,



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4. gave false information with respect to [insert description of the relevant information required by section 18-16-103 or section 18-16-105, C.R.S. 2019].

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of giving false information with respect to the purchase of a valuable article.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to file required reports giving false information with respect to the purchase of a valuable article.

### **COMMENT**

1. See § 18-16-108, C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:306.8 (defining “purchaser”); Instruction F:385.3 (defining “valuable article”).

## **CHAPTER 17**

## **COLORADO ORGANIZED CRIME CONTROL ACT**

17:01

### **Colorado Organized Crime Control Act (Use of Proceeds)**

The elements of the crime of use of proceeds derived from a pattern of racketeering activity or the collection of an unlawful debt are:

1. That the defendant,

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**2. in the State of Colorado, at or about the date and place charged,**

**3. knowingly,**

**4. received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt, and**

**5. used or invested, whether directly or indirectly, any part of such proceeds or the proceeds derived from the investment or use thereof in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of use of proceeds from derived from a pattern of racketeering activity or the collection of an unlawful debt.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of use of proceeds derived from a pattern of racketeering activity or the collection of an unlawful debt.

**COMMENT**

1. See § 18-17-104(1)(a), C.R.S. 2019.

2. See Instruction F:125 (defining “enterprise”); Instruction F:195 (defining “knowingly”); Instruction F:261 (defining “pattern of racketeering activity”); Instruction F:307 (defining “racketeering activity”); Instruction F:380 (defining “unlawful debt”).

3. Section 18-17-104(4) makes it unlawful to “conspire” to violate



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section 18-17-104(1). *See* Instruction G2:05 (conspiracy). Section 18-17-104(4) also makes it unlawful to “endeavor” to violate section 18-17-104(1), and a division of the court of appeals has equated an “endeavor” with an “attempt.” *See* *New Crawford Valley, Ltd. v. Benedict*, 877 P.2d 1363, 1373 (Colo. App. 1993); *see also* Instruction G2:01 (criminal attempt).

Thus, there may be cases in which a defendant who is charged with conspiring to violate, conspiring to attempt to violate, or attempting to violate section 18-17-104(1) is not also separately charged with conspiracy, in violation of section 18-2-201, or attempt, in violation of section 18-2-101. In such circumstances, give the jury the elemental instruction for conspiracy and/or attempt (but without the two concluding paragraphs that explain the burden of proof). Place the elemental instruction(s) for conspiracy and/or attempt immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms for conspiracy and/or attempt.

4. Section 18-17-104(1)(b), C.R.S. 2019, includes an exemption from criminal liability for certain types of securities purchases. However, the Committee has not drafted a model affirmative defense instruction.

**17:02**

### **Colorado Organized Crime Control Act (Acquiring an Interest)**

**The elements of the crime of acquiring an interest through a pattern of racketeering activity or through the collection of an unlawful debt are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. through a pattern of racketeering activity or through the collection of an unlawful debt,**
- 5. acquired or maintained, directly or indirectly, any interest in or control of any enterprise or real property.**
- [6. and that the defendant’s conduct was not**



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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of acquiring an interest through a pattern of racketeering activity or through the collection of an unlawful debt.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of acquiring an interest through a pattern of racketeering activity or through the collection of an unlawful debt.**

**COMMENT**

1. *See* § 18-17-104(2), C.R.S. 2019.

2. *See* Instruction F:125 (defining “enterprise”); Instruction F:195 (defining “knowingly”); Instruction F:261 (defining “pattern of racketeering activity”); Instruction F:307 (defining “racketeering activity”); Instruction F:380 (defining “unlawful debt”).

3. Section 18-17-104(4) makes it unlawful to “conspire” to violate section 18-17-104(2). *See* Instruction G2:05 (conspiracy). Section 18-17-104(4) also makes it unlawful to “endeavor” to violate section 18-17-104(2), and a division of the court of appeals has equated an “endeavor” with an “attempt.” *See* New Crawford Valley, Ltd. v. Benedict, 877 P.2d 1363, 1373 (Colo. App. 1993); *see also* Instruction G2:01 (criminal attempt).

**17:03**

**Colorado Organized Crime Control Act (Employed By, or Associated With, an Enterprise)**

**The elements of the crime of a pattern of racketeering activity or collection of an unlawful debt (employed by, or associated with, an enterprise) are:**

**1. That the defendant,**

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**2. in the State of Colorado, at or about the date and place charged,**

**3. knowingly,**

**4. was employed by, or associated with, any enterprise, and**

**5. conducted or participated, directly or indirectly, in such enterprise through a pattern of racketeering activity or through the collection of an unlawful debt.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of a pattern of racketeering activity or the collection of an unlawful debt (employed by, or associated with, an enterprise).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of a pattern of racketeering activity or through the collection of an unlawful debt (employed by, or associated with, an enterprise).

### **COMMENT**

1. See § 18-17-104(3), C.R.S. 2019.

2. See Instruction F:125 (defining “enterprise”); Instruction F:195 (defining “knowingly”); Instruction F:261 (defining “pattern of racketeering activity”); Instruction F:307 (defining “racketeering activity”); Instruction F:380 (defining “unlawful debt”).

3. Section 18-17-104(4) makes it unlawful to “conspire” to violate section 18-17-104(3). See Instruction G2:05 (conspiracy). Section 18-17-104(4) also makes it unlawful to “endeavor” to violate section 18-17-



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104(3), and a division of the court of appeals has equated an “endeavor” with an “attempt.” *See* *New Crawford Valley, Ltd. v. Benedict*, 877 P.2d 1363, 1373 (Colo. App. 1993); *see also* Instruction G2:01 (criminal attempt).

### 17:04.INT

#### Colorado Organized Crime Control Act—Interrogatory (Treble Fine)

If you find the defendant not guilty of [use of proceeds derived from a pattern of racketeering activity or the collection of an unlawful debt] [acquiring an interest through a pattern of racketeering activity or through the collection of an unlawful debt] [pattern of racketeering activity or the collection of an unlawful debt (employed by, or associated with, an enterprise)], you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of [use of proceeds derived from a pattern of racketeering activity or the collection of an unlawful debt] [acquiring an interest through a pattern of racketeering activity or through the collection of an unlawful debt] [pattern of racketeering activity or the collection of an unlawful debt (employed by, or associated with, an enterprise)], you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:

Was the gain or loss extraordinarily large? (Answer “Yes” or “No”)

The gain or loss was extraordinarily large only if:

1. the defendant, through commission of [use of proceeds derived from a pattern of racketeering activity or the collection of an unlawful debt] [acquiring an interest through a pattern of racketeering activity or through the collection of an



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unlawful debt] [pattern of racketeering activity or the collection of an unlawful debt (employed by, or associated with, an enterprise)], derived pecuniary value, or caused personal injury or property damage or other loss, with a gross value gained, or a gross value of loss caused, that was [equal to] [at least] [insert an amount that is greater than \$333,333].

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-17-105(2), C.R.S. 2019.

2. See Instruction F:266 (defining “pecuniary value”); *see, e.g.*, Instruction E:28 (special verdict form).

3. Section 18-17-105(2), C.R.S. 2019, authorizes a court to impose a fine equal to three times the gross amount of the gain or loss that the defendant caused (plus court costs, and the costs of investigation and prosecution), and section 18-17-105(3), states that the court “shall hold a hearing to determine the amount of the fine.” However, in cases where there is the potential for the trebled amount to exceed the maximum authorized fine, *see* § 18-1.3-401(1)(a)(III)(A), C.R.S. 2019 (the maximum fine for a class two felony conviction is one million dollars), the issue should be submitted to the jury. *See* *S. Union Co. v. United States*, 567 U.S. 132 (2012) (fines implicate the Sixth Amendment right to a jury trial and are thus subject to the rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000)).

## CHAPTER 18

### OFFENSES RELATED TO CONTROLLED SUBSTANCES

#### CHAPTER COMMENTS

1. See § 18-18-431, C.R.S. 2019 (“The common law defense known as the ‘procuring agent defense’ is not a defense to any crime in this title.”); see also *People v. Farris*, 812 P.2d 654, 656 (Colo. App. 1991) (tracing the demise of the “procuring agent defense” prior to the enactment, in 1992, of section 18-18-431).

2. Section 18-18-302(2), (3)(a) to (c), C.R.S. 2019, exempts from criminal liability persons who are “registered by the board” as manufacturers or distributors of controlled substances, and it identifies other persons who are exempt from criminal liability without being subject to the registration requirement (such as persons possessing a controlled substance pursuant to a lawful order of a practitioner). However, the Committee has not drafted model affirmative defense instructions for these exemptions.

#### 18:01

#### Unlawful Possession of a Controlled Substance

The elements of the crime of unlawful possession of a controlled substance are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. possessed a controlled substance.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-

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**dant guilty of unlawful possession of a controlled substance.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful possession of a controlled substance.**

### COMMENT

1. *See* + § 18-18-403.5(1), C.R.S. 2019.
2. *See* Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).
3. *See* Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event”).
4. Section 18-18-428(1)(b), C.R.S. 2019, establishes an exemption from criminal liability for “any minuscule, residual controlled substance that may be present in a used hypodermic needle or syringe” if the location of the needle or syringe is disclosed in specified circumstances.
5. In 2015, the Committee added Comment 4. *See* Ch. 76, sec. 1, § 18-18-428(1)(b), 2015 Colo. Sess. Laws 200, 200 to 01.
6. + In 2019, the Committee corrected the statutory citation in Comment 1.

### 18:02.INT

#### **Unlawful Possession of a Controlled Substance— Interrogatory (Specified Substance)**

**If you find the defendant not guilty of unlawful possession of a controlled substance, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of unlawful possession of a controlled substance, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**



Did the defendant unlawfully possess [insert “flunitrazepam,” “ketamine,” + “gamma hydroxybutyrate, including its salts, isomers, and salts of isomers,” “cathinones,” or + “more than four grams of a controlled substance listed in schedule I or II”]? (Answer “Yes” or “No”)

The defendant unlawfully possessed [insert “flunitrazepam,” + “gamma hydroxybutyrate, including its salts, isomers, and salts of isomers,” “ketamine,” “cathinones,” or + “more than four grams of a controlled substance listed in schedule I or II”] only if:

1. the controlled substance unlawfully possessed by the defendant was any material, compound, mixture, or preparation that contained any quantity of [insert “flunitrazepam,” “ketamine,” + “gamma hydroxybutyrate, including its salts, isomers, and salts of isomers,” “cathinones,” or + “more than four grams of a controlled substance listed in schedule I or II”].

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

#### COMMENT

1. See § 18-18-403.5(2)(a), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).
3. + In 2019, pursuant to a legislative amendment, the Committee

## OFFENSES RELATED TO CONTROLLED SUBSTANCES

added the phrase “gamma hydroxybutyrate, including its salts, isomers, and salts of isomers,” throughout this instruction; it also changed the phrase “a controlled substance listed in schedule I or II” to “more than four grams of a controlled substance listed in schedule I or II” throughout the instruction. *See* Ch. 291, sec. 1, § 18-18-403.5(2)(a), 2019 Colo. Sess. Laws 2676, 2676.

Additionally, the Committee notes that these changes go into effect on March 1, 2020. *See id.*

### 18:03.INT

#### **Unlawful Possession of a Controlled Substance— Interrogatory (Other Specified Substances)**

**If you find the defendant not guilty of unlawful possession of a controlled substance, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of unlawful possession of a controlled substance, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the defendant unlawfully possess + [not more than four grams of a controlled substance listed in schedule I or II] [a controlled substance listed in schedule III, IV, or V, except flunitrazepam, + gamma hydroxybutyrate, or ketamine]? (Answer “Yes” or “No”)**

**The defendant unlawfully possessed + [not more than four grams of a controlled substance listed in schedule I or II] [a controlled substance listed in schedule III, IV, or V, except flunitrazepam, + gamma hydroxybutyrate, or ketamine] only if:**

**1. the controlled substance unlawfully possessed by the defendant was any material, compound, mixture, or preparation that contained + [not more than four grams of a controlled substance**



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listed in schedule I or II] [any quantity of a controlled substance listed in schedule III, IV, or V, except flunitrazepam, + gamma hydroxybutyrate, or ketamine].

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-18-403.5(2)(c), C.R.S. 2019.

2. See, e.g., Instruction E:28 (special verdict form).

3. + In 2019, pursuant to a legislative amendment, the Committee added the first bracketed alternative throughout this instruction, and it added “gamma hydroxybutyrate” to the excepting language in the second bracketed alternative. See Ch. 291, sec. 1, § 18-18-403.5(2)(c), 2019 Colo. Sess. Laws 2676, 2676.

Additionally, the Committee notes that these changes go into effect on March 1, 2020. See *id.*

18:04

### Unlawful Use of a Controlled Substance

The elements of the crime of unlawful use of a controlled substance are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,



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3. used any controlled substance, and
  4. the controlled substance was not dispensed by or under the direction of a person licensed or authorized by law to prescribe, administer, or dispense the controlled substance for bona fide medical needs.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful use of a controlled substance.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful use of a controlled substance.

### COMMENT

1. See § 18-18-404(1)(a), C.R.S. 2019.
2. See Instruction F:09 (defining “administer”); Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:100 (defining “dispense”); Instruction F:268 (defining “person”).
3. See Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event”).

### 18:05

## Unlawful Distribution, Manufacturing, Dispensing, or Sale

The elements of the crime of unlawful distribution, manufacturing, dispensing, or sale are:

1. That the defendant,

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**2. in the State of Colorado, at or about the date and place charged,**

**3. knowingly,**

**[4. manufactured, dispensed, sold, or distributed a controlled substance.]**

**[4. possessed a controlled substance with intent to manufacture, dispense, sell, or distribute.]**

**[4. induced, attempted to induce, or conspired with one or more other persons to manufacture, dispense, sell, or distribute a controlled substance.]**

**[4. induced, attempted to induce, or conspired with one or more other persons to possess a controlled substance with intent to manufacture, dispense, sell, or distribute.]**

**[4. possessed one or more chemicals or supplies or equipment with intent to manufacture a controlled substance.]**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful distribution, manufacturing, dispensing, or sale.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful distribution, manufacturing, dispensing, or sale.**



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### COMMENT

1. See § 18-18-405(1), C.R.S. 2019.

2. See Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:100 (defining “dispense”); Instruction F:102 (defining “distribute”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:206 (defining “manufacture”); Instruction F:268 (defining “person”); Instruction F:281 (defining “possession”); Instruction F:327 (defining “sale”); Instruction G2:05 (conspiracy).

3. See *People v. Abiodun*, 111 P.3d 462, 466 (Colo. 2005) (“The one-sentence proscription [in section 18-18-405(1)(a)] is structured as a series of acts, with reference to the same controlled substance and governed by a common mens rea. The acts chosen for specific inclusion are not themselves mutually exclusive but overlap in various ways and cover a continuum of conduct from the production of a controlled substance to its delivery to another person, under any of a number of circumstances.”).

4. Section 18-18-405(1) excepts from criminal liability acts “authorized by part 1 of + article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)], part 2 of article 80 of title 27 [(alcohol and drug abuse treatment programs)], or part 2 or 3 of this article 18 [(standards, schedules, and regulation)].” However, the Committee has not drafted model affirmative defense instructions.

5. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

6. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 5.

7. + In 2019, the Committee updated the quotation in Comment 4 to reflect a legislative amendment. See Ch. 136, sec. 106, § 18-18-405(1)(a), 2019 Colo. Sess. Laws 613, 1679.

### 18:06.INT

#### **Unlawful Distribution, Manufacturing, Dispensing, or Sale—Interrogatory (Quantity of a Schedule I or II Controlled Substance)**

**If you find the defendant not guilty of unlawful**



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distribution, manufacturing, dispensing, or sale, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of unlawful distribution, manufacturing, dispensing, or sale, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]

[\_. Did the unlawful distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed more than two hundred twenty-five grams and contained a schedule I or schedule II controlled substance? (Answer “Yes” or “No”)]

[\_. Did the unlawful distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed more than fourteen grams, but not more than two hundred twenty-five grams, and contained a schedule I or schedule II controlled substance? (Answer “Yes” or “No”)]

[\_. Did the unlawful distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed not more than fourteen grams and contained a schedule I or schedule II controlled substance? (Answer “Yes” or “No”)]

The prosecution has the burden to prove the amount of the schedule I or schedule II controlled substance beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark

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**“Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. See § 18-18-405(2)(a)(I)(A), (b)(I)(A), (c)(I), C.R.S. 2019.

2. See, e.g., Instruction E:28 (special verdict form).

3. It may be necessary to modify the model interrogatory in light of the rule of aggregation established by section 18-18-405(5), C.R.S. 2019 (“When a person commits unlawful distribution, manufacture, dispensing, sale, or possession with intent to manufacture, dispense, sell, or distribute any schedule I or schedule II controlled substance, as listed in section 18-18-203 or 18-18-204, flunitrazepam, ketamine, or cathinones, or conspires with one or more persons to commit the offense, pursuant to subsection (1) of this section, twice or more within a period of six months, without having been placed in jeopardy for the prior offense or offenses, the aggregate amount of the schedule I or schedule II controlled substance, flunitrazepam, ketamine, or cathinones involved may be used to determine the level of drug offense.”). However, note that this rule of aggregation relates only to sentence enhancement; it does not authorize, or require, the aggregation of multiple acts in a single count. See, e.g., § 18-4-401(4)(a), (b), C.R.S. 2019 (aggregation and charging of multiple thefts “in a single count”); Instructions 4-4:14, 4-4:15. Therefore, do not modify the model elemental instruction defining the substantive offense.

4. In cases where the amount of the controlled substance is a disputed issue, one or both of the parties may assert that there is an evidentiary basis for submitting more than one quantity question as part of the interrogatory. Accordingly, the above interrogatory includes bracketed examples for lesser quantity questions.

5. Where more than one quantity question is included as part of the interrogatory, use a special verdict form with a corresponding format that repeats the admonition that the jury cannot answer “Yes” to more than one quantity question.

For example, in a case involving an interrogatory with three quantity questions (and no separate interrogatories asking about other sentence enhancement factors), the relevant portion of the special verdict form would read as follows:



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I. We, the jury, find the defendant, [insert name], NOT GUILTY of Count No. [ ], unlawful distribution, manufacturing, dispensing, or sale.

---

FOREPERSON\*

II. We, the jury, find the defendant, [insert name], GUILTY of Count No. [ ], unlawful distribution, manufacturing, dispensing, or sale.

---

FOREPERSON\*

We further find, with respect to the verdict question[s] for this count, as follows:

\*\*1. Did the distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed more than two hundred twenty-five grams and contained a schedule I or schedule II controlled substance?

☐ Yes

☐ No

\*\*2. Did the distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed more than fourteen grams, but not more than two hundred twenty-five grams, and contained a schedule I or schedule II controlled substance]?

☐ Yes

☐ No

\*\*3. Did the distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed fourteen grams or less and contained a schedule I or schedule II controlled substance]?

☐ Yes

☐ No

---

FOREPERSON\*

\* The foreperson should use ink to sign on one of the two lines indicating a verdict of "not guilty" or "guilty." If the verdict is "guilty," the foreperson should use ink to mark the appropriate space(s) indicating



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the answer(s) to the verdict question(s), and then sign on the line following the verdict question[s].

**\*\* Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].**

6. In 2015, the Committee appended “Answer ‘Yes’ or ‘No’ ” parentheses to each interrogatory.

### 18:07.INT

#### **Unlawful Distribution, Manufacturing, Dispensing, or Sale—Interrogatory (Quantity of Methamphetamine, Heroin, Ketamine, or Cathinones)**

**If you find the defendant not guilty of unlawful distribution, manufacturing, dispensing, or sale, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of unlawful distribution, manufacturing, dispensing, or sale, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]**

**[\_. Did the unlawful distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed more than one hundred twelve grams and contained [methamphetamine] [heroin] [ketamine] [cathinones]? (Answer “Yes” or “No”)]**

**[\_. Did the unlawful distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed more than seven grams, but not more than one hundred twelve grams, and contained [metham-**

phetamine] [heroin] [ketamine] [cathinones]?  
(Answer “Yes” or “No”)]

[\_. Did the unlawful distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed not more than seven grams and contained [methamphetamine] [heroin] [ketamine] [cathinones]?  
(Answer “Yes” or “No”)]

The prosecution has the burden to prove the amount of the [methamphetamine] [heroin] [ketamine] [cathinones] beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

#### COMMENT

1. See § 18-18-405(2)(a)(I)(B), (b)(I)(B), (c)(II), C.R.S. 2019.

2. See, e.g., Instruction E:28 (special verdict form).

3. It may be necessary to modify the model interrogatory in light of the rule of aggregation established by section 18-18-405(5), C.R.S. 2019 (“When a person commits unlawful distribution, manufacture, dispensing, sale, or possession with intent to manufacture, dispense, sell, or distribute any schedule I or schedule II controlled substance, as listed in section 18-18-203 or 18-18-204, flunitrazepam, ketamine, or cathinones, or conspires with one or more persons to commit the offense, pursuant to subsection (1) of this section, twice or more within a period of six months, without having been placed in jeopardy for the prior offense or offenses, the aggregate amount of the schedule I or schedule II controlled substance, flunitrazepam, ketamine, or cathinones involved may be used to determine the level of drug offense.”). However, note that this rule of aggregation relates only to sentence enhancement; it does not authorize, or require, the aggregation of multiple acts in a single count. See, e.g., § 18-4-401(4)(a), (b), C.R.S. 2019 (aggregation and



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charging of multiple thefts “in a single count”); Instructions 4-4:14, 4-4:15. Therefore, do not modify the model elemental instruction defining the substantive offense.

4. In cases where the amount of methamphetamine, heroin, ketamine, or cathinones is a disputed issue, one or both of the parties may assert that there is an evidentiary basis for submitting more than one quantity question as part of the interrogatory. Accordingly, the above interrogatory includes bracketed examples for lesser quantity questions.

5. Where more than one quantity question is included as part of the interrogatory, use a special verdict form with a corresponding format that repeats the admonition that the jury cannot answer “Yes” to more than one quantity question. *See* Instruction 18:06.INT, Comment 5.

6. The Committee has not drafted a model instruction defining “cathinones” because the statutory definition is lengthy. *See* § 18-18-102(3.5), C.R.S. 2019. The court should draft a special instruction based on the relevant portion(s) of the statutory definition.

7. In 2015, the Committee appended “Answer ‘Yes’ or ‘No’ ” parentheticals to each interrogatory.

### 18:08.INT

#### **Unlawful Distribution, Manufacturing, Dispensing, or Sale—Interrogatory (Contemporaneous Consumption)**

**If you find the defendant not guilty of unlawful distribution, manufacturing, dispensing, or sale, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of unlawful distribution, manufacturing, dispensing, or sale, and you further find that the distribution, manufacturing, dispensing, or sale was of any material, compound, mixture, or preparation that weighed [not more than fourteen grams and contained a schedule I or schedule II controlled substance] [not more than seven grams and contained [methamphetamine] [heroin] [ketamine] [cathinones]] you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form.**



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**[\_. Did the defendant distribute or transfer not more than four grams of a schedule I or II controlled substance for the purpose of consuming all of the controlled substance with another person or persons at a time substantially contemporaneous with the transfer? (Answer “Yes” or “No”)]**

**[\_. Did the defendant distribute or transfer not more than two grams of [methamphetamine] [heroin] [ketamine] [cathinones] for the purpose of consuming all of the [methamphetamine] [heroin] [ketamine] [cathinones] with another person or persons at a time substantially contemporaneous with the transfer? (Answer “Yes” or “No”)]**

The prosecution has the burden to prove, beyond a reasonable doubt, either that the transfer was of [more than four grams of a schedule I or II controlled substance] [more than two grams of [methamphetamine] [heroin] [ketamine] [cathinones]], or that the transfer was not for the purpose of consuming all of the controlled substance with another person or persons at a time substantially contemporaneous with the transfer.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

**COMMENT**

1. See § 18-18-405(2)(d)(II), C.R.S. 2019.

2. See Instruction F:268 (defining “person”); see, e.g., Instruction E:28 (special verdict form).

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3. As indicated by means of the “further find” provision in the second paragraph, this instruction is designed to accompany either Instruction 18:06.INT or Instruction 18:07.INT in cases involving the smallest amounts of the specified substances. However, this instruction should not be given without Instruction 18:06.INT or Instruction 18:07.INT because doing so deprives the jury of a way to make a finding that, although the amount of the controlled substance was sufficiently small to meet the statutory requirement, the distribution or transfer was not for the purpose of consuming all of the controlled substance with another person or persons at a time substantially contemporaneous with the transfer.

### 18:09.INT

#### **Unlawful Distribution, Manufacturing, Dispensing, or Sale—Interrogatory (Quantity of Flunitrazepam)**

If you find the defendant not guilty of unlawful distribution, manufacturing, dispensing, or sale, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of unlawful distribution, manufacturing, dispensing, or sale, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]

[\_. Did the unlawful distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed more than fifty milligrams and contained flunitrazepam? (Answer “Yes” or “No”)]

[\_. Did the unlawful distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed more than ten milligrams, but not more than fifty milligrams, and contained flunitrazepam? (Answer “Yes” or “No”)]



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**[. Did the unlawful distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed not more than ten milligrams and contained flunitrazepam? (Answer “Yes” or “No”)]**

**The prosecution has the burden to prove the amount of the flunitrazepam beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. See § 18-18-405(2)(a)(I)(C), (b)(I)(C), (c)(III), C.R.S. 2019.

2. See, e.g., Instruction E:28 (special verdict form).

3. It may be necessary to modify the model interrogatory in light of the rule of aggregation established by section 18-18-405(5), C.R.S. 2019 (“When a person commits unlawful distribution, manufacture, dispensing, sale, or possession with intent to manufacture, dispense, sell, or distribute any schedule I or schedule II controlled substance, as listed in section 18-18-203 or 18-18-204, flunitrazepam, ketamine, or cathinones or conspires with one or more persons to commit the offense, pursuant to subsection (1) of this section, twice or more within a period of six months, without having been placed in jeopardy for the prior offense or offenses, the aggregate amount of the schedule I or schedule II controlled substance, flunitrazepam, ketamine, or cathinones involved may be used to determine the level of drug offense.”). However, note that this rule of aggregation relates only to sentence enhancement; it does not authorize, or require, the aggregation of multiple acts in a single count. See, e.g., § 18-4-401(4)(a), (b), C.R.S. 2019 (aggregation and charging of multiple thefts “in a single count”); Instructions 4-4:14, 4-4:15. Therefore, do not modify the model elemental instruction defining the substantive offense.

4. In cases where the amount of flunitrazepam is a disputed issue,



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one or both of the parties may assert that there is an evidentiary basis for submitting more than one quantity question as part of the interrogatory. Accordingly, the above interrogatory includes bracketed examples for lesser quantity questions.

5. Where more than one quantity question is included as part of the interrogatory, use a special verdict form with a corresponding format that repeats the admonition that the jury cannot answer “Yes” to more than one quantity question. *See* Instruction 18:06.INT, Comment 5.

6. In 2015, the Committee appended “Answer ‘Yes’ or ‘No’ ” parentheticals to each interrogatory.

### 18:10.INT

#### **Unlawful Distribution, Manufacturing, Dispensing, or Sale—Interrogatory (Quantity of a Schedule Iii or Iv Controlled Substance)**

If you find the defendant not guilty of unlawful distribution, manufacturing, dispensing, or sale, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of unlawful distribution, manufacturing, dispensing, or sale, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]

[\_. Did the unlawful distribution, manufacturing, dispensing, or sale involve any material, compound, mixture, or preparation that weighed more than four grams and contained a schedule III or IV controlled substance? (Answer “Yes” or “No”)]

[\_. Did the unlawful the distribution, manufacturing, dispensing, or sale involve any material,

**compound, mixture, or preparation that weighed not more than four grams and contained a schedule III or IV controlled substance? (Answer “Yes” or “No”)]**

**The prosecution has the burden to prove the amount of the schedule III or IV controlled substance beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

#### COMMENT

1. *See* § 18-18-405(2)(c)(IV), (2)(d)(I), (e)(II), C.R.S. 2019.
2. *See, e.g.*, Instruction E:28 (special verdict form).
3. In cases where the amount of schedule III or IV controlled substance(s) is a disputed issue, one or both of the parties may assert that there is an evidentiary basis for submitting more than one quantity question as part of the interrogatory. Accordingly, the above interrogatory includes a bracketed example for a lesser quantity question.
4. Where more than one quantity question is included as part of the interrogatory, use a special verdict form with a corresponding format that repeats the admonition that the jury cannot answer “Yes” to more than one quantity question. *See* Instruction 18:06.INT, Comment 5.
5. In 2015, the Committee appended “Answer ‘Yes’ or ‘No’ ” parentheticals to each interrogatory.

#### 18:11.INT

**Unlawful Distribution, Manufacturing, Dispensing, or Sale—Interrogatory (Schedule Iii or Iv Controlled Substance, Without Remuneration)**

**If you find the defendant not guilty of unlawful**



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distribution, manufacturing, dispensing, or sale, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of unlawful distribution, manufacturing, dispensing, or sale, and you further find that the distribution, manufacturing, dispensing, or sale was of any material, compound, mixture, or preparation that weighed not more than four grams and contained a schedule III or IV controlled substance, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form.

1. Did the defendant transfer, with no remuneration, not more than four grams of a schedule III or IV controlled substance? (Answer “Yes” or “No”)

The prosecution has the burden to prove, beyond a reasonable doubt, either that the transfer was of more than four grams of a schedule III or IV controlled substance, or that the transfer was with remuneration.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-18-405(2)(e)(II), C.R.S. 2019.
2. See Instruction F:310 (defining “remuneration”); see, e.g., Instruction E:28 (special verdict form).



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3. As indicated by means of the “further find” provision in the second paragraph, this instruction is designed to accompany Instruction 18:10.INT. This instruction should not be given without Instruction 18:10.INT, because doing so deprives the jury of a way to make a finding that, although the amount of the controlled substance was sufficiently small to meet the statutory requirement, the transfer was with remuneration.

### **18:12.INT**

#### **Unlawful Distribution, Manufacturing, Dispensing, or Sale—Interrogatory (Schedule V Controlled Substance)**

If you find the defendant not guilty of unlawful distribution, manufacturing, dispensing, or sale, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of unlawful distribution, manufacturing, dispensing, or sale, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the offense involve a schedule V controlled substance? (Answer “Yes” or “No”)**

**The offense involved a schedule V controlled substance only if:**

- 1. the defendant unlawfully distributed, manufactured, dispensed, or sold a schedule V controlled substance.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide**

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the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. *See* § 18-18-405(2)(e)(I), C.R.S. 2019.
2. *See, e.g.*, Instruction E:28 (special verdict form).

### 18:13.INT

#### Unlawful Distribution, Manufacturing, Dispensing, or Sale—Interrogatory (Minor)

If you find the defendant not guilty of unlawful distribution, manufacturing, dispensing, or sale, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of unlawful distribution, manufacturing, dispensing, or sale, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the offense involve a minor? (Answer “Yes” or “No”)

The offense involved a minor only if:

1. the defendant was an adult, and

[2. he [she] sold, dispensed, distributed, or otherwise transferred any quantity of a schedule I or schedule II controlled substance or any material, compound, mixture, or preparation that contained any amount of a schedule I or schedule II controlled substance, other than marijuana or marijuana concentrate, to a minor, and]

[2. he [she] sold, dispensed, distributed, or

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otherwise transferred any quantity of a schedule III or schedule IV controlled substance or any material, compound, mixture, or preparation that contained any amount of a schedule III or schedule IV controlled substance to a minor, and]

3. the minor was at least two years younger than the defendant.

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

COMMENT

1. See § 18-18-405(2)(a)(II), (b)(II), C.R.S. 2019.
2. See Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); see, e.g., Instruction E:28 (special verdict form).
3. Article 18 does not define the terms “adult” and “minor.”

18:14

**Selling, Transferring, or Dispensing Marijuana to a Minor  
(More Than Two and One-Half Pounds of Marijuana; or  
More Than One Pound of Marijuana Concentrate)**

The elements of the crime of selling, transferring, or dispensing marijuana to a minor (more than two and one-half pounds of marijuana, or more than one pound of marijuana concentrate) are:

1. That the defendant,



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2. in the State of Colorado, at or about the date and place charged,

3. was an adult, and

4. sold, transferred, or dispensed more than two and one half pounds of marijuana, or more than one pound of marijuana concentrate,

5. to a minor who was at least two years younger than the defendant.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of selling, transferring, or dispensing marijuana to a minor (more than two and one-half pounds of marijuana, or more than one pound of marijuana concentrate).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of selling, transferring, or dispensing marijuana to a minor (more than two and one-half pounds of marijuana, or more than one pound of marijuana concentrate).

## COMMENT

1. See § 18-18-406(1)(a), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”); Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); Instruction F:327 (defining “sale”).

3. Article 18 does not define the terms “adult” and “minor.” Cf. Colo. Const. Art. XVIII, § 14(6)(a) to (i) (defining the conditions that must be met in order for a person under eighteen to be a medical marijuana patient); Colo. Const. Art. XVIII, § 16, (6)(c) (“Nothing in this

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section is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of twenty-one or to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana.”).

**18:15**

### **Selling, Transferring, or Dispensing Marijuana to a Minor (More Than Six Ounces, But Not More Than Two and One-Half Pounds of Marijuana; or More Than Three Ounces, But Not More Than One Pound of Marijuana Concentrate)**

The elements of the crime of selling, transferring, or dispensing marijuana to a minor (more than six ounces, but not more than two and one-half pounds of marijuana, or more than three ounces, but not more than one pound of marijuana concentrate) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an adult, and
4. sold, transferred, or dispensed more than six ounces, but not more than two and one-half pounds of marijuana, or more than three ounces, but not more than one pound of marijuana concentrate,
5. to a minor who was at least two years younger than the defendant.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of selling, transferring, or dispensing



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**marijuana to a minor (more than six ounces, but not more than two and one-half pounds of marijuana, or more than three ounces, but not more than one pound of marijuana concentrate).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of selling, transferring, or dispensing marijuana to a minor (more than six ounces, but not more than two and one-half pounds of marijuana, or more than three ounces, but not more than one pound of marijuana concentrate).**

### COMMENT

1. See § 18-18-406(1)(b), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”); Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); Instruction F:327 (defining “sale”).

3. Article 18 does not define the terms “adult” and “minor.” Cf. Colo. Const. Art. XVIII, § 14(6)(a) to (i) (defining the conditions that must be met in order for a person under eighteen to be a medical marijuana patient); Colo. Const. Art. XVIII, § 16, (6)(c) (“Nothing in this section is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of twenty-one or to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana.”).

### 18:16

**Selling, Transferring, or Dispensing Marijuana to a Minor (More Than One Ounce, But Not More Than Six Ounces of Marijuana; or More Than One-Half Ounce, But Not More Than Three Ounces of Marijuana Concentrate)**

**The elements of the crime of selling, transferring, or dispensing marijuana to a minor (more than one ounce, but not more than six ounces of marijuana, or more than one-half ounce, but not more than three ounces of marijuana concentrate) are:**

1. That the defendant,



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2. in the State of Colorado, at or about the date and place charged,

3. was an adult, and

4. sold, transferred, or dispensed more than one ounce, but not more than six ounces of marijuana, or more than one-half ounce, but not more than three ounces of marijuana concentrate,

5. to a minor who was at least two years younger than the defendant.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of selling, transferring, or dispensing marijuana to a minor (more than one ounce, but not more than six ounces of marijuana, or more than one-half ounce, but not more than three ounces of marijuana concentrate).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of selling, transferring, or dispensing marijuana to a minor (more than one ounce, but not more than six ounces of marijuana, or more than one-half ounce, but not more than three ounces of marijuana concentrate).

COMMENT

1. See § 18-18-406(1)(c), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”); Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); Instruction F:327 (defining “sale”).

3. Article 18 does not define the terms “adult” and “minor.” Cf.

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Colo. Const. Art. XVIII, § 14(6)(a) to (i) (defining the conditions that must be met in order for a person under eighteen to be a medical marijuana patient); Colo. Const. Art. XVIII, § 16, (6)(c) (“Nothing in this section is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of twenty-one or to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana.”).

18:17

### **Selling, Transferring, or Dispensing Marijuana to a Minor (Not More Than One Ounce of Marijuana, or Not More Than One-Half Ounce of Marijuana Concentrate)**

The elements of the crime of selling, transferring, or dispensing marijuana to a minor (not more than one ounce of marijuana or not more than one-half ounce of marijuana concentrate) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was an adult, and
4. sold, transferred, or dispensed not more than one ounce of marijuana or not more than one-half ounce of marijuana concentrate,
5. to a minor who was at least two years younger than the defendant.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of selling, transferring, or dispensing marijuana to a minor (not more than one ounce of marijuana or not more than one-half ounce of marijuana concentrate).



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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of selling, transferring, or dispensing marijuana to a minor (not more than one ounce of marijuana or not more than one-half ounce of marijuana concentrate).

### COMMENT

1. See § 18-18-406(1)(d), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”); Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); Instruction F:327 (defining “sale”).

3. Article 18 does not define the terms “adult” and “minor.” *Cf.* Colo. Const. Art. XVIII, § 14(6)(a) to (i) (defining the conditions that must be met in order for a person under eighteen to be a medical marijuana patient); Colo. Const. Art. XVIII, § 16, (6)(c) (“Nothing in this section is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of twenty-one or to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana.”).

### 18:18

#### Processing or Manufacturing Marijuana or Marijuana Concentrate

The elements of the crime of processing or manufacturing marijuana or marijuana concentrate are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. processed or manufactured any marijuana or marijuana concentrate or allowed marijuana or marijuana concentrate to be processed or manufactured on land owned, occupied, or controlled by him [her].



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**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of processing or manufacturing marijuana or marijuana concentrate.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of processing or manufacturing marijuana or marijuana concentrate.**

### COMMENT

1. See § 18-18-406(2)(a)(I), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:206 (defining “manufacture”); Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”).

3. See Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”).

4. Section 18-18-406(2)(a)(I) excepts from criminal liability acts “authorized pursuant to part 1 of + article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)], or part 2 of article 80 of title 27 [(alcohol and drug abuse treatment programs)].” However, the Committee has not drafted model affirmative defense instructions.

5. Sections 18-18-406(6), (7), C.R.S. 2019, establish exemptions based on “group C guidelines of the national cancer institute” and “dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration approved drug product.” However, the Committee has not drafted model affirmative defense instructions.

6. Article 18 does not define the term “process.”

7. + In 2019, the Committee updated the quotation in Comment 4 to reflect a legislative amendment. See Ch. 136, sec. 107, § 18-18-406(2)(a)(I), 2019 Colo. Sess. Laws 613, 1679.

18:19

**Dispensing, Selling, Distributing, or Manufacturing  
Marijuana or Marijuana Concentrate**

The elements of the crime of dispensing, selling, distributing, or manufacturing marijuana or marijuana concentrate are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
- [4. dispensed, sold, distributed, or possessed with intent to manufacture, dispense, sell, or distribute marijuana or marijuana concentrate.]
- [4. attempted, induced, attempted to induce, or conspired with one or more other persons, to dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute marijuana or marijuana concentrate.]
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of dispensing, selling, distributing, or manufacturing marijuana or marijuana concentrate.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of dispensing, selling, distributing, or manufacturing marijuana or marijuana concentrate.



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### COMMENT

1. See § 18-18-406(2)(b)(I), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”); Instruction F:102 (defining “distribute”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:206 (defining “manufacture”); Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); Instruction F:268 (defining “person”); Instruction F:281 (defining “possession”); Instruction F:327 (defining “sale”); Instruction G2:05 (conspiracy).

3. See Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”).

4. Section 18-18-406(2)(b)(I) excepts from criminal liability acts “authorized by part 1 of + article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)], part 2 of article 80 of title 27 [(alcohol and drug abuse treatment programs)], or part 2 or 3 of this article 18 [(standards, schedules, and regulation)].” However, the Committee has not drafted model affirmative defense instructions.

5. Sections 18-18-406(6), (7), C.R.S. 2019, establish exemptions based on “group C guidelines of the national cancer institute” and “dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration approved drug product.” However, the Committee has not drafted model affirmative defense instructions.

6. Article 18 does not define the term “process.”

7. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

8. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 7.

9. + In 2019, the Committee updated the quotation in Comment 4 to reflect a legislative amendment. See Ch. 136, sec. 107, § 18-18-406(2)(b)(I), 2019 Colo. Sess. Laws 613, 1679.

### 18:20.INT

#### **Dispensing, Selling, Distributing, or Manufacturing Marijuana or Marijuana Concentrate—Interrogatory (Specified Quantity)**

**If you find the defendant not guilty of dispensing,**



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selling, distributing, or manufacturing marijuana or marijuana concentrate, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of dispensing, selling, distributing, or manufacturing marijuana or marijuana concentrate, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]

[\_. Did the unlawful dispensing, selling, distributing, or manufacturing involve more than fifty pounds of marijuana or more than twenty-five pounds of marijuana concentrate? (Answer “Yes” or “No”)]

[\_. Did the unlawful dispensing, selling, distributing, or manufacturing involve more than five pounds but not more than fifty pounds of marijuana or more than two and one-half pounds but not more than twenty-five pounds of marijuana concentrate? (Answer “Yes” or “No”)]

[\_. Did the unlawful dispensing, selling, distributing, or manufacturing involve more than twelve ounces but not more than five pounds of marijuana or more than six ounces but not more than two and one-half pounds of marijuana concentrate? (Answer “Yes” or “No”)]

[\_. Did the unlawful dispensing, selling, distributing, or manufacturing involve more than four ounces but not more than twelve ounces of marijuana, or more than two ounces but not more than six ounces of marijuana concentrate? (Answer “Yes” or “No”)]

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**The prosecution has the burden to prove the amount of the marijuana or marijuana concentrate beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. *See* § 18-18-406(2)(b)(III)(A) to (D), C.R.S. 2019.

2. *See, e.g.*, Instruction E:28 (special verdict form).

3. In cases where the amount of marijuana or marijuana concentrate is a disputed issue, one or both of the parties may assert that there is an evidentiary basis for submitting more than one quantity question as part of the interrogatory. Accordingly, the above interrogatory includes bracketed examples for lesser quantity questions.

4. Where more than one quantity question is included as part of the interrogatory, use a special verdict form with a corresponding format that repeats the admonition that the jury cannot answer “Yes” to more than one quantity question.

For example, in a case involving an interrogatory with three quantity questions (and no separate interrogatories asking about other sentence enhancement factors), the relevant portion of the special verdict form would read as follows:

I. We, the jury, find the defendant, [insert name], NOT GUILTY of Count No. [ ], dispensing, selling, distributing, or manufacturing marijuana or marijuana concentrate.

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#### FOREPERSON\*

II. We, the jury, find the defendant, [insert name], GUILTY of Count No. [ ], dispensing, selling, distributing, or manufacturing marijuana or marijuana concentrate.

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### FOREPERSON\*

We further find, with respect to the verdict question[s] for this count, as follows:

\*\*1. Did the dispensing, selling, distributing, or manufacturing involve more than fifty pounds of marijuana or more than twenty-five pounds of marijuana concentrate?

☐ Yes

☐ No

\*\*2. Did the dispensing, selling, distributing, or manufacturing involve more than five pounds but not more than fifty pounds of marijuana, or more than two and one-half pounds but not more than twenty-five pounds of marijuana concentrate?

☐ Yes

☐ No

\*\*3. Did the dispensing, selling, distributing, or manufacturing involve more than twelve ounces but not more than five pounds of marijuana or more than six ounces but not more than two and one-half pounds of marijuana concentrate?

☐ Yes

☐ No

---

### FOREPERSON\*

\* The foreperson should use ink to sign on one of the two lines indicating a verdict of “not guilty” or “guilty.” If the verdict is “guilty,” the foreperson should use ink to mark the appropriate space indicating the answer to the verdict question, and then sign on the line following the verdict question[s].

\*\* Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].

5. In 2015, the Committee appended “Answer ‘Yes’ or ‘No’ ” parentheticals to each interrogatory.



18:21

### **Cultivating or Growing Marijuana**

The elements of the crime of cultivating or growing marijuana are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. cultivated, grew, or produced a marijuana plant or allowed a marijuana plant to be cultivated, grown, or produced on land that he [she] owned, occupied, or controlled.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cultivating or growing marijuana.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cultivating or growing marijuana.

#### **COMMENT**

1. See § 18-18-406(3)(a)(I), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:206 (defining “manufacture”); Instruction F:208 (defining “marijuana”); Instruction F:279.3 (defining “plant”).

3. See Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”).

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4. Sections 18-18-406(6), (7), C.R.S. 2019, establish exemptions based on “group C guidelines of the national cancer institute” and “dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration approved drug product.” However, the Committee has not drafted model affirmative defense instructions.

5. In 2017, the Committee modified the citation in Comment 1 and added the cross-reference to Instruction F:279.3 in Comment 2 pursuant to a legislative amendment. *See* Ch. 402, sec. 2, § 18-18-406(3)(a)(I), (3)(c)(II), 2017 Colo. Sess. Laws 2094, 2095.

### **18:22.INT**

#### **Cultivating or Growing Marijuana—Interrogatory (Number of Plants)**

**If you find the defendant not guilty of cultivating or growing marijuana, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of cultivating or growing marijuana, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form. [Although you may answer “No” to more than one question, you may not answer “Yes” to more than one question. Further, if you answer “Yes” to any question, you should not answer the other question[s].]**

**[\_. Did the unlawful cultivating or growing of marijuana involve more than thirty plants? (Answer “Yes” or “No”)]**

**[\_. Did the unlawful cultivating or growing of marijuana involve more than six but not more than thirty plants? (Answer “Yes” or “No”)]**

**The prosecution has the burden to prove the number of plants beyond a reasonable doubt.**

**After considering all the evidence, if you decide**

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**the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. *See* § 18-18-406(3)(a)(III), C.R.S. 2019.

2. *See* Instruction F:279.3 (defining “plant”); *see, e.g.*, Instruction E:28 (special verdict form).

3. In cases where the number of marijuana plants is a disputed issue, one or both of the parties may assert that there is an evidentiary basis for submitting more than one quantity question as part of the interrogatory. Accordingly, the above interrogatory includes a bracketed example for a lesser quantity question.

4. Where more than one quantity question is included as part of the interrogatory, use a special verdict form with a corresponding format that repeats the admonition that the jury cannot answer “Yes” to more than one quantity question. *See* Instruction 18:06.INT, Comment 5.

5. In 2015, the Committee appended “Answer ‘Yes’ or ‘No’ ” parentheticals to each interrogatory.

6. In 2017, the Committee modified the citation in Comment 1 and added the cross-reference to Instruction F:279.3 in Comment 2 pursuant to a legislative amendment. *See* Ch. 402, sec. 2, § 18-18-406(3)(a)(III), (3)(c)(II), 2017 Colo. Sess. Laws 2094, 2096.

### 18:22.3

#### **Cultivating or Growing Marijuana (More Than Twelve Plants)**

**The elements of the crime of cultivating or growing marijuana (more than twelve plants) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**



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3. knowingly,

[4. cultivated, grew, or produced more than twelve marijuana plants on or in a residential property.]

[4. allowed more than twelve marijuana plants to be cultivated, grown, or produced on or in a residential property.]

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cultivating or growing marijuana (more than twelve plants).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cultivating or growing marijuana (more than twelve plants).

COMMENT

1. See § 18-18-406(3)(a)(II)(A), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:208 (defining “marijuana”); Instruction F:279.3 (defining “plant”); Instruction F:317.5 (defining “residential property”).

3. See Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”). Regarding these affirmative defenses, section 18-18-406(3)(a)(II)(A) provides that the behavior proscribed by this statute is unlawful “[r]egardless of whether the plants are for medical or recreational use.” The Committee expresses no opinion on any potential conflict between this statute and the affirmative defenses authorized under the state constitution.

4. Section 18-18-406(3)(a)(II)(B) provides an exemption where “a county, municipality, or city and county law expressly permits” such cultivation “in an enclosed and locked space and within the limit set by

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the county, municipality, or city and county where the plants are located.” However, the Committee has not drafted model affirmative defense instructions.

5. Sections 18-18-406(6), (7) establish exemptions based on “group C guidelines of the national cancer institute” and “dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration approved drug product.” However, the Committee has not drafted model affirmative defense instructions.

6. The Committee added this instruction in 2017 pursuant to new legislation. *See* Ch. 402, sec. 2, § 18-18-406(3)(a)(II), 2017 Colo. Sess. Laws 2094, 2095.

### 18:22.7.INT

#### **Cultivating or Growing Marijuana (More Than Twelve Plants)—Interrogatory (Number of Plants)**

**If you find the defendant not guilty of cultivating or growing marijuana (more than twelve plants), you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of cultivating or growing marijuana (more than twelve plants), you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form.**

- 1. Did the unlawful cultivating or growing of marijuana involve more than twenty-four plants? (Answer “Yes” or “No”)**

**The prosecution has the burden to prove the number of plants beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you**



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should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-18-406(3)(a)(IV), C.R.S. 2019.
2. See Instruction F:279.3 (defining “plant”); *see, e.g.*, Instruction E:28 (special verdict form).
3. The statute only provides for sentence enhancement for “a second or subsequent offense.” Therefore, the court should only provide this interrogatory if it finds, as a matter of fact, that the defendant was previously convicted of this offense. *Cf.* *People v. Nunn*, 148 P.3d 222, 228 (Colo. App. 2006) (holding that, under the prior conviction exception to the rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), the defendant in habitual criminal proceedings “had no right to have a jury determine whether he was the person convicted in the prior cases”).
4. The Committee added this instruction in 2017 pursuant to new legislation. See Ch. 402, sec. 2, § 18-18-406(3)(a)(IV), 2017 Colo. Sess. Laws 2094, 2096.

### 18:23

#### **Possession of More Than Twelve Ounces of Marijuana or More Than Three Ounces of Marijuana Concentrate**

The elements of the crime of possession of more than twelve ounces of marijuana or more than three ounces of marijuana concentrate are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. possessed more than twelve ounces of marijuana or more than three ounces of marijuana concentrate.
- [4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



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**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of more than twelve ounces of marijuana or more than three ounces of marijuana concentrate.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of more than twelve ounces of marijuana or more than three ounces of marijuana concentrate.**

### COMMENT

1. *See* § 18-18-406(4)(a), C.R.S. 2019.

2. *See* Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. *See* Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”).

4. Sections 18-18-406(6), (7), C.R.S. 2019, establish exemptions based on “group C guidelines of the national cancer institute” and “dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration approved drug product.” However, the Committee has not drafted model affirmative defense instructions.

5. + This instruction does not apply to crimes committed on or after March 1, 2020.

6. + In 2019, the Committee added Comment 5 pursuant to a legislative amendment. *See* Ch. 291, sec. 2, § 18-18-406(4), 2019 Colo. Sess. Laws 2676, 2677.

18:24

**Possession of More Than Six Ounces + of Marijuana, or  
Possession of More Than Three Ounces of Marijuana  
Concentrate**

The elements of the crime of possession of more than six ounces but not more than twelve ounces of marijuana, or possession of not more than three ounces of marijuana concentrate are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. possessed more than six ounces + of marijuana or more than three ounces of marijuana concentrate.
- [4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of more than six ounces + of marijuana, or possession of + more than three ounces of marijuana concentrate.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of more than six ounces + of marijuana, or possession of + more than three ounces of marijuana concentrate.

**COMMENT**

1. See § 18-18-406(4)(b), C.R.S. 2019.
2. See Instruction F:208 (defining “marijuana”); Instruction F:210



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(defining “marijuana concentrate”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. *See* Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event”); Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”).

4. Sections 18-18-406(6), (7), C.R.S. 2019, establish exemptions based on “group C guidelines of the national cancer institute” and “dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration approved drug product.” However, the Committee has not drafted model affirmative defense instructions.

5. + Previously, this instruction applied to possession of more than six ounces *but not more than twelve ounces* of marijuana, or to possession of *not more than three ounces* of marijuana concentrate. In 2019, the General Assembly deleted the “but not more than twelve ounces” language, and it changed “*not more than three ounces* of marijuana concentrate” to “*more than three ounces* of marijuana concentrate. *See* Ch. 291, sec. 2, § 18-18-406(4)(b), 2019 Colo. Sess. Laws 2676, 2677 (emphasis added). Therefore, in 2019, the Committee modified this instruction accordingly.

Additionally, the Committee notes that these modifications take effect on or after March 1, 2020. *See id.*

18:25

### **Possession of More Than Two Ounces But Not More Than Six Ounces of Marijuana + or Not More Than Three Ounces of Marijuana Concentrate**

**The elements of the crime of possession of more than two ounces but not more than six ounces of marijuana + or not more than three ounces of marijuana concentrate are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,



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**3. possessed more than two ounces but not more than six ounces of marijuana, + or not more than three ounces of marijuana concentrate.**

**[4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of more than two ounces but not more than six ounces of marijuana + or not more than three ounces of marijuana concentrate.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of more than two ounces but not more than six ounces of marijuana + or not more than three ounces of marijuana concentrate.**

**COMMENT**

1. *See* § 18-18-406(4)(c), C.R.S. 2019.

2. *See* Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. *See*; Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event”); Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”).

4. *See also* § 18-18-406(5)(b)(II), C.R.S. 2019 (“Open and public display, consumption, or use of more than two ounces of marijuana or any amount of marijuana concentrate is deemed possession thereof, and violations shall be punished as provided for in subsection (4) of this section.”).

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5. + In 2019, pursuant to a legislative amendment, the Committee added the phrase “or not more than three ounces of marijuana concentrate” throughout this instruction. *See* Ch. 291, sec. 2, § 18-18-406(4)(c), 2019 Colo. Sess. Laws 2676, 2677.

Additionally, the Committee notes that this amendment takes effect on or after March 1, 2020. *See id.*

### 18:26

#### Possession of More Than One Ounce But Not More Than Two Ounces of Marijuana

The elements of the crime of possession of more than one ounce but not more than two ounces of marijuana are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. possessed more than one ounce but not more than two ounces of marijuana.
- [4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of more than one ounce but not more than two ounces of marijuana.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of more than one ounce but not more than two ounces of marijuana.

#### COMMENT

1. *See* § 18-18-406(5)(a)(I), C.R.S. 2019; *see also* Colo. Const. Art.



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XVIII, § 16, (3)(a) (possession of one ounce or less of marijuana by an adult is not unlawful, notwithstanding any other provision of law).

2. See Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event”); Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”).

4. See *also* § 18-18-406(5)(b)(III), C.R.S. 2019 (“Except as otherwise provided for in subparagraph (I) of this paragraph (b)] (openly and publicly displaying, consuming, or using two ounces or less of marijuana)], consumption or use of marijuana or marijuana concentrate is deemed possession thereof, and violations must be punished as provided for in paragraph (a) of this subsection (5) and subsection (4) of this section.”).

5. + The statute provides for exemptions from liability for licensed marijuana hospitality businesses. See § 18-18-406(5)(b)(IV), (V). However, the Committee has not drafted model affirmative defense instructions.

6. + In 2019, the Committee added Comment 5 pursuant to new legislation. See Ch. 340, secs. 9, 23, § 18-18-406(5)(b)(IV), (V), 2019 Colo. Sess. Laws 3105, 3116, 3127.

### 18:27

#### **Open and Public Display, Consumption, or Use of Less Than Two Ounces of Marijuana**

**The elements of the crime of open and public display, consumption, or use of less than two ounces of marijuana are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. openly and publicly displayed, consumed, or used,



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### 4. two ounces or less of marijuana.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of open and public display, consumption, or use of less than two ounces of marijuana.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of open and public display, consumption, or use of less than two ounces of marijuana.

### COMMENT

1. See § 18-18-406(5)(b)(I), C.R.S. 2019.

2. See Instruction F:208 (defining “marijuana”).

3. See Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

4. + The statute provides for exemptions from liability for licensed marijuana hospitality businesses. See § 18-18-406(5)(b)(IV), (V). However, the Committee has not drafted model affirmative defense instructions.

5. + In 2019, the Committee added Comment 4 pursuant to new legislation. See Ch. 340, secs. 9, 23, § 18-18-406(5)(b)(IV), (V), 2019 Colo. Sess. Laws 3105, 3116, 3127.

18:28

## Transferring or Dispensing Not More Than Two Ounces of Marijuana for No Consideration

The elements of the crime of transferring or

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**dispensing not more than two ounces of marijuana for no consideration are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. transferred or dispensed,**
- 4. not more than two ounces of marijuana to another person,**
- 5. for no consideration.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of transferring or dispensing not more than two ounces of marijuana for no consideration.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of transferring or dispensing not more than two ounces of marijuana for no consideration.**

**COMMENT**

1. *See* § 18-18-406(5)(c), C.R.S. 2019.

2. *See* Instruction F:208 (defining “marijuana”); Instruction F:268 (defining “person”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. *See* Instruction H:32 (affirmative defense of “reporting an emer-



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agency drug or alcohol overdose event”); Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”).

4. In cases where both the defendant and the recipient were at least twenty-one years old at the time of the transfer or dispensing, the court should modify the third element as follows: “more than ounce but not more than two ounces of marijuana to another person.” *See* Colo. Const. Art. XVIII, § 16(3)(c) (“Notwithstanding any other provision of law, the following acts are not unlawful and shall not be an offense under Colorado law or the law of any locality within Colorado or be a basis for seizure or forfeiture of assets under Colorado law for persons twenty-one years of age or older: . . . [t]ransfer of one ounce or less of marijuana without remuneration to a person who is twenty-one years of age or older.”).

5. The term “consideration” is not defined in Article 18. *See, e.g., Black’s Law Dictionary* 370 (10th ed. 2014) (defining “consideration” as: “Something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee.”). The definition that appears in section 4-3-303(b), C.R.S. 2019, should not be used because it is limited to contracts.

6. + The statute provides for exemptions from liability for licensed marijuana hospitality businesses. *See* § 18-18-406(5)(b)(IV), (V). However, the Committee has not drafted model affirmative defense instructions.

7. + In 2019, the Committee added Comment 6 pursuant to new legislation. *See* Ch. 340, secs. 9, 23, § 18-18-406(5)(b)(IV), (V), 2019 Colo. Sess. Laws 3105, 3116, 3127.

### 18:28.5

#### **Transfer of Marijuana or Marijuana Concentrate At No Cost Related to Remuneration**

**The elements of the crime of transfer of marijuana or marijuana concentrate at no cost related to remuneration are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. transferred marijuana or marijuana concentrate at no cost to a person, and**



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4. the transfer was in any way related to remuneration for any other service or product.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of transfer of marijuana or marijuana concentrate at no cost related to remuneration.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of transfer of marijuana or marijuana concentrate at no cost related to remuneration.

COMMENT

1. See § 18-18-406(5.5), C.R.S. 2019.

2. See Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”); Instruction F:268 (defining “person”); Instruction F:310 (defining “remuneration”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event”); Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”).

4. The Colorado Constitution provides for an exemption from liability where both the transferor and recipient are twenty-one years of age or older and the amount of marijuana transferred is less than one ounce. See Colo. Const. Art. XVIII, § 16(3)(c) (“Notwithstanding any other provision of law, the following acts are not unlawful and shall not be an offense under Colorado law or the law of any locality within Colorado or be a basis for seizure or forfeiture of assets under Colorado law for persons twenty-one years of age or older: . . . [t]ransfer of one ounce or less of marijuana without remuneration to a person who is twenty-

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one years of age or older.”). However, the Committee has not drafted a model affirmative defense instruction.

5. The Committee added this instruction in 2016 pursuant to new legislation. *See* Ch. 338, sec. 11, § 18-18-406(5.5), 2016 Colo. Sess. Laws 1372, 1378.

### 18:29

#### Unlawful Use or Possession of Synthetic Cannabinoids or Salvia Divinorum

The elements of the crime of unlawful use or possession of synthetic cannabinoids or salvia divinorum are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. used or possessed any amount of any synthetic cannabinoid or salvia divinorum.
- [4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful use or possession of synthetic cannabinoids or salvia divinorum.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful use or possession of synthetic cannabinoids or salvia divinorum.

#### COMMENT

1. *See* § 18-18-406.1(1), C.R.S. 2019.



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2. See Instruction F:281 (defining “possession”); Instruction F:328 (defining “salvia divinorum”); Instruction F:359 (defining “synthetic cannabinoid”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. See Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event”).

### 18:30

#### Unlawful Manufacturing, Dispensing, Sale, or Distribution of Synthetic Cannabinoids or Salvia Divinorum

The elements of the crime of unlawful manufacturing, dispensing, sale, or distribution of synthetic cannabinoids or salvia divinorum are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. manufactured, dispensed, sold, or distributed, or possessed with intent to manufacture, dispense, sell, or distribute,
5. any amount of any synthetic cannabinoid or salvia divinorum.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful manufacturing, dispensing, sale, or distribution of synthetic cannabinoids or salvia divinorum.



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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful manufacturing, dispensing, sale, or distribution of synthetic cannabinoids salvia divinorum.

### COMMENT

1. See § 18-18-406.2(1)(a), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”); Instruction F:102 (defining “distribute”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:206 (defining “manufacture”); Instruction F:281 (defining “possession”); Instruction F:327 (defining “sale”); Instruction F:328 (defining “salvia divinorum”); Instruction F:359 (defining “synthetic cannabinoid”).

18:31

### Unlawful Manufacturing, Dispensing, Sale, or Distribution of Synthetic Cannabinoids or Salvia Divinorum (Inducing, Attempting, or Conspiring)

The elements of the crime of unlawful manufacturing, dispensing, sale, or distribution of synthetic cannabinoids or salvia divinorum (inducing, attempting, or conspiring) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. induced, attempted to induce, or conspired with one or more other persons,
5. to manufacture, dispense, sell, or distribute, or possess with intent to manufacture, dispense, sell, or distribute,
6. any amount of any synthetic cannabinoid or salvia divinorum.

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**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful manufacturing, dispensing, sale, or distribution of synthetic cannabinoids or salvia divinorum (inducing, attempting, or conspiring).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful manufacturing, dispensing, sale, or distribution of synthetic cannabinoids or salvia divinorum (inducing, attempting, or conspiring).**

### COMMENT

1. See § 18-18-406.2(1)(b), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”); Instruction F:102 (defining “distribute”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:206 (defining “manufacture”); Instruction F:268 (defining “person”); Instruction F:281 (defining “possession”); Instruction F:328 (defining “salvia divinorum”); Instruction F:359 (defining “synthetic cannabinoid”); Instruction G2:05 (conspiracy).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

4. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 3.

**Unlawful Cultivation of Salvia Divinorum**

The elements of the crime of unlawful cultivation of salvia divinorum are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. cultivated salvia divinorum,
5. with intent to dispense, sell, or distribute any amount of the salvia divinorum.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful cultivation of salvia divinorum.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful cultivation of salvia divinorum.

**COMMENT**

1. See § 18-18-406.2(1)(c), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”); Instruction F:102 (defining “distribute”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:327 (defining “sale”); Instruction F:328 (defining “salvia divinorum”).



18:33.INT

**Synthetic Cannabinoids or Salvia Divinorum Offenses—  
Interrogatory (Minor)**

If you find the defendant not guilty of [insert name of offense relating to synthetic cannabinoids or salvia divinorum from section 18-18-406.2(1)(a)–(c)], you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of [insert name of offense relating to synthetic cannabinoids or salvia divinorum from section 18-18-406.2(1)(a)–(c)], you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant dispense, sell, or distribute to a minor? (Answer “Yes” or “No”)**

**The defendant dispensed, sold, or distributed to a minor only if:**

1. the defendant dispensed, sold, or distributed synthetic cannabinoid or salvia divinorum to a minor who was less than eighteen years of age, and
2. the defendant was at least eighteen years of age and at least two years older than the minor.

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you**

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should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-18-406.2(3)(a), (b), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

### 18:34

#### Fraudulent Representation of a Medical Condition Related to Medical Marijuana

The elements of the crime of fraudulent representation of a medical condition related to medical marijuana are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. fraudulently,
4. represented a medical condition to a physician, the Department of Public Health and Environment, or a state or local law enforcement official,
5. for the purpose of falsely obtaining a marijuana registry identification card from the Department of Public Health and Environment, or for the purpose of avoiding arrest and prosecution for a marijuana-related offense.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements be-

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yond a reasonable doubt, you should find the defendant guilty of fraudulent representation of a medical condition related to medical marijuana.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraudulent representation of a medical condition related to medical marijuana.

### COMMENT

1. *See* § 18-18-406.3(2)(a), C.R.S. 2019.

2. *See also* Colo. Const. Art. XVIII, § 14(1)(h) (defining “state health agency” in a manner that is consistent with the use of the term “the department” in section 18-18-406.3, C.R.S. 2019).

### 18:35

#### Fraudulent Use or Theft of a Marijuana Registry Identification Card

The elements of the crime of fraudulent use or theft of a marijuana registry identification card are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. fraudulently used, or committed theft of,
4. any person’s marijuana registry identification card [(including any card that was required to be returned to the Department of Public Health and Environment)].
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide



## OFFENSES RELATED TO CONTROLLED SUBSTANCES

the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraudulent use or theft of a marijuana registry identification card.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraudulent use or theft of a marijuana registry identification card.

### COMMENT

1. *See* § 18-18-406.3(3), C.R.S. 2019.

2. *See* Instruction F:268 (defining “person”); Instruction F:308.5 (defining “registry identification card”); Instruction 4-4:01 (theft); *see also* Colo. Const. Art. XVIII, § 14(1)(h) (defining “state health agency” in a manner that is consistent with the use of the term “the department” in section 18-18-406.3, C.R.S. 2019).

3. If the defendant is not separately charged with theft, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. *See* Instruction 4-4:01. Place the elemental instruction for theft immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for theft.

4. It may be necessary to draft a special instruction explaining when a marijuana registry identification card must be returned. *See* Colo. Const. Art. XVIII, § 14.

### 18:36

#### **Fraudulently Producing, Counterfeiting, or Tampering With a Marijuana Registry Identification Card**

The elements of the crime of fraudulently producing, counterfeiting, or tampering with a marijuana registry identification card are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

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- 3. fraudulently,**
- 4. produced, counterfeited, or tampered with,**
- 5. a marijuana registry identification card.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of fraudulently producing, counterfeiting, or tampering with a marijuana registry identification card.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of fraudulently producing, counterfeiting, or tampering with a marijuana registry identification card.**

**COMMENT**

- 1. See § 18-18-406.3(4), C.R.S. 2019.**
- 2. See Instruction F:308.5 (defining "registry identification card").**

**18:37**

**Unauthorized Release of Confidential Information  
Provided to or by the Medical Marijuana Registry**

**The elements of the crime of unauthorized release of confidential information provided to or by the marijuana registry are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**

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3. released or made public,
4. any confidential record or any confidential information contained in any such record that was provided to or by the marijuana registry or primary caregiver registry of the Department of Public Health and Environment,
5. without the written authorization of the marijuana registry patient.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized release of confidential information provided to or by the marijuana registry.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized release of confidential information provided to or by the marijuana registry.

### COMMENT

1. See § 18-18-406.3(5), C.R.S. 2019.

2. See Instruction F:259 (defining “patient”); see also Colo. Const. Art. XVIII, § 14(1)(h) (defining “state health agency” in a manner that is consistent with the use of the term “the department” in section 18-18-406.3, C.R.S. 2019).

3. It may be necessary to draft a special instruction explaining that section 18-18-406.3(5) applies to “[a]ny person including, but not limited to, any officer, employee, or agent of the department, or any officer, employee, or agent of any state or local law enforcement agency.”

4. In 2015, the Committee added the words “or primary caregiver registry” to the fourth element. See Ch. 199, sec. 6, § 18-18-406.3(5), 2015 Colo. Sess. Laws 681, 688.



18:38

**Unauthorized Release of Confidential Information  
Provided to or by a Licensed Medical Marijuana Business**

The elements of the crime of unauthorized release of confidential information provided to or by a licensed medical marijuana business are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was an owner, officer, employee of a business licensed pursuant to the + Colorado Marijuana Code, or an employee of the state medical marijuana licensing authority, a local medical marijuana licensing authority, or the Department of Public Health and Environment, and
  4. released or made public,
  5. a patient's medical record or any confidential information contained in any patient's medical record that was provided to or by a business licensed pursuant to the + Colorado Marijuana Code,
  6. without the written authorization of the patient.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized release of confidential information provided to or by a licensed medical marijuana business.

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized release of confidential information provided to or by a licensed medical marijuana business.**

### COMMENT

1. *See* § 18-18-406.3(7), C.R.S. 2019.

2. *See* Instruction F:259 (defining “patient”); *see also* Colo. Const. Art. XVIII, § 14(1)(h) (defining “state health agency” in a manner that is consistent with the use of the term “the department” in section 18-18-406.3, C.R.S. 2019).

3. The statute includes exceptions from criminal liability. *See* § 18-18-406.3(7), C.R.S. 2019 (“except that the owner, officer, or employee shall release the records or information upon request by the state or local medical marijuana licensing authority. The records or information produced for review by the state or local licensing authority shall not become public records by virtue of the disclosure and may be used only for a purpose authorized by + article 10 of title 44, or for another state or local law enforcement purpose. The records or information shall constitute medical data as defined by section 24-72-204(3)(a)(I), C.R.S. The state or local medical marijuana licensing authority may disclose any records or information so obtained only to those persons directly involved with any investigation or proceeding authorized by + article 10 of title 44, or for any state or local law enforcement purpose.”). However, the Committee has not drafted model affirmative defense instructions.

4. In 2018, the Committee modified the parenthetical quotation in Comment 3 pursuant to a legislative amendment. *See* Ch. 55, sec. 13, § 18-18-406.3(7), 2018 Colo. Sess. Laws 502, 587.

5. + In 2019, pursuant to a legislative amendment, the Committee changed the phrase “Colorado Medical Marijuana Code” in the third and fifth elements to “Colorado Marijuana Code,” and it again modified the parenthetical quotation in Comment 3. *See* Ch. 315, sec. 17, § 18-18-406.3(7), 2019 Colo. Sess. Laws 2823, 2937–38.

## 18:38.5

### Unlawful Advertising of Marijuana

**The elements of unlawful advertising of marijuana are:**

1. That the defendant,



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2. in the State of Colorado, at or about the date and place charged,

3. knowingly,

4. was not licensed to sell medical marijuana or retail marijuana, and

5. advertised in a newspaper, magazine, handbill, or other publication or on the internet,

6. the unlawful sale of marijuana, marijuana concentrate, or a + marijuana product by a person not licensed to sell marijuana, marijuana concentrate, or a marijuana product.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful advertising of marijuana.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful advertising of marijuana.

COMMENT

1. See § 18-18-406.4(1), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”).

3. Regarding the fourth element, the statute does not apply to persons who are licensed to sell marijuana *either* in Colorado, + *see* Title 44, Article 10 (Colorado Marijuana Code), *or* in another state.

4. The statute exempts from liability primary caregivers who advertise that they are available to be primary caregivers to patients.



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See § 18-18-406.4(2), C.R.S.; Instruction F:259 (defining “patient”); Instruction F:285 (defining “primary care-giver”). However, the Committee has not drafted model affirmative defense instructions.

5. The Committee added this instruction in 2017 pursuant to new legislation. See Ch. 104, sec. 1, § 18-18-406.4, 2017 Colo. Sess. Laws 383, 383.

6. + In 2019, pursuant to a legislative amendment, the Committee changed the phrase “marijuana-infused product” in the sixth element to “marijuana product,” and it modified the statutory cross-reference in Comment 3. See Ch. 315, sec. 18, § 18-18-406.4(1), 2019 Colo. Sess. Laws 2823, 2938. However, the Committee notes that these legislative changes did not take affect until January 1, 2020; therefore, if the charges involve conduct occurring prior to that date, the court should use the 2018 version of this instruction, which uses the phrase “marijuana-infused product” rather than “marijuana product.”

18:39

### Unlawful Use of Marijuana in a Detention Facility

The elements of the crime of unlawful use of marijuana in a detention facility are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was confined in any detention facility in Colorado, and
4. possessed or used marijuana.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful use of marijuana in a detention facility.

After considering all the evidence, if you decide

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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful use of marijuana in a detention facility.**

### COMMENT

1. *See* § 18-18-406.5(1), C.R.S. 2019.

2. *See* Instruction F:97 (defining “detention facility”); Instruction F:208 (defining “marijuana”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 18:39.5

#### **Manufacture of Marijuana Concentrate Using an Inherently Hazardous Substance**

**The elements of the crime of manufacture of marijuana concentrate using an inherently hazardous substance are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. manufactured marijuana concentrate using an inherently hazardous substance, and
5. was not a licensed manufacturer pursuant to + the Colorado Marijuana Code.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**

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the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of manufacture of marijuana concentrate using an inherently hazardous substance.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of manufacture of marijuana concentrate using an inherently hazardous substance.

### COMMENT

1. See § 18-18-406.6(1), C.R.S. 2019.

2. See Instruction F:181.5 (defining “inherently hazardous substance”); Instruction F:210 (defining “marijuana concentrate”).

3. The Committee added this instruction in 2015. See Ch. 242, sec. 2, § 18-18-406.6(1), 2015 Colo. Sess. Laws 895, 896.

4. + In 2019, pursuant to a legislative amendment, the Committee changed the phrase “the Colorado Medical Marijuana Code or the Colorado Retail Marijuana Code” in the fifth element to “the Colorado Marijuana Code.” See Ch. 315, sec. 19, § 18-18-406.6(1), 2019 Colo. Sess. Laws 2823, 2938.

### 18:39.7

## Allowing Manufacture of Marijuana Concentrate Using an Inherently Hazardous Substance

The elements of the crime of manufacture of allowing marijuana concentrate using an inherently hazardous substance are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. allowed marijuana concentrate to be manufac-



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tured on any premises using an inherently hazardous substance, and

5. owned, managed, operated, or otherwise controlled the use of the premises, and

6. was not a licensed manufacturer pursuant to + the Colorado Marijuana Code.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of allowing manufacture of marijuana concentrate using an inherently hazardous substance.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of allowing manufacture of marijuana concentrate using an inherently hazardous substance.

### COMMENT

1. See § 18-18-406.6(2), C.R.S. 2019.

2. See Instruction F:181.5 (defining “inherently hazardous substance”); Instruction F:195 (defining “knowingly”); Instruction F:210 (defining “marijuana concentrate”).

3. The Committee added this instruction in 2015. See Ch. 242, sec. 2, § 18-18-406.6(2), 2015 Colo. Sess. Laws 895, 896.

4. + In 2019, pursuant to a legislative amendment, the Committee changed the phrase “the Colorado Medical Marijuana Code or the Colorado Retail Marijuana Code” in the sixth element to “the Colorado Marijuana Code.” See Ch. 315, sec. 19, § 18-18-406.6(2), 2019 Colo. Sess. Laws 2823, 2938.

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### 18:40.INT

#### **Any Felony Controlled Substance Conviction Under Part 4—Interrogatory (Pattern, Substantial Source, and Special Skill)**

If you find the defendant not guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant commit the offense as part of a pattern? (Answer “Yes” or “No”)**

**The defendant committed the offense as part of a pattern only if:**

- 1. the defendant committed the offense of [insert name(s) of felony offense(s) from Article 18, Part 4] as part of a pattern of manufacturing, sale, dispensing, or distributing controlled substances,**
- 2. which constituted a substantial source of his [her] income, and**
- 3. in which he [she] manifested special skill or expertise.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

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After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-18-407(1)(a), C.R.S. 2019.

2. See Instruction F:260 (defining “pattern”); Instruction F:347 (defining “special skill or expertise”); Instruction F:355 (defining “substantial source of that person’s income”); see, e.g., Instruction E:28 (special verdict form).

3. Section 18-18-407(2)(a), C.R.S. 2019, provides as follows: “In support of the findings under paragraph (a) of subsection (1) of this section, it may be shown that the defendant has had in his or her own name or under his or her control income or property not explained as derived from a source other than such manufacture, sale, dispensing, or distribution of controlled substances.” However, nothing in this provision suggests that the admission of such evidence gives rise to a permissible inference of illicit activity.

### 18:41.INT

#### Any Felony Controlled Substance Conviction Under Part 4—Interrogatory (Conspiracy)

If you find the defendant not guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the defendant commit the offense as part of a conspiracy? (Answer “Yes” or “No”)

The defendant committed the offense as part of a conspiracy only if:



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1. the defendant committed the [insert name(s) of felony offense(s) from Article 18, Part 4] in the course of, or in furtherance of, a conspiracy with one or more persons to engage in a pattern of unlawful manufacturing, sale, dispensing, or distributing a controlled substance, and

2. did, or agreed that he [she] would, initiate, organize, plan, finance, direct, manage, or supervise all or part of the conspiracy, manufacture, sale, dispensing, distributing, or give or receive a bribe, or use force in connection with the manufacture, sale, dispensing, or distribution.

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-18-407(1)(b), C.R.S. 2019.

2. See Instruction F:260 (defining “pattern”); Instruction F:268 (defining “person”); Instruction G2:05 (conspiracy); see, e.g., Instruction E:28 (special verdict form).

### 18:42.INT

#### **Any Felony Controlled Substance Conviction Under Part 4—Interrogatory (Introducing or Importing Over a Specified Amount)**

If you find the defendant not guilty of [insert

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name(s) of felony offense(s) from Article 18, Part 4], you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Did the defendant introduce or import more than [fourteen grams of any schedule I or II controlled substance] [seven grams of [methamphetamine] [heroin] [ketamine] [cathinones]] [ten milligrams of flunitrazepam]? (Answer “Yes” or “No”)

The defendant introduced or imported more than [insert quantity and name of controlled substance] only if:

1. in the course of committing [insert name(s) of felony offense(s) from Article 18, Part 4], the defendant introduced or imported into the state of Colorado more than [fourteen grams of any schedule I or II controlled substance] [seven grams of methamphetamine] [heroin] [ketamine] [cathinones]] [ten milligrams of flunitrazepam].

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.



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### COMMENT

1. *See* § 18-18-407(1)(c), C.R.S. 2019.
2. *See, e.g.*, Instruction E:28 (special verdict form).

### 18:43.INT

#### **Any Felony Controlled Substance Conviction Under Part 4—Interrogatory (Deadly Weapon or Firearm)**

If you find the defendant not guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the offense involve a deadly weapon or firearm? (Answer “Yes” or “No”)**

**The offense involved a deadly weapon or firearm only if:**

[1. the defendant used, displayed, or possessed on his [her] person or within his [her] immediate reach, a deadly weapon, as that term is defined in your instructions, at the time of the commission of [insert name(s) of felony offense(s) from Article 18, Part 4].]

[1. the defendant or a confederate of the defendant possessed a firearm, as that term is defined in your instructions, to which the defendant or confederate had access in a manner that posed a risk to others or in a vehicle the defendant was occupying at the time of the commission of [insert name(s) of felony offense(s) from Article 18, Part 4].]



**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

1. See § 18-18-407(1)(d)(I), (II), C.R.S. 2019.

2. See Instruction F:88 (defining “deadly weapon”); Instruction F:154 (defining “firearm”); see, e.g., Instruction E:28 (special verdict form).

**18:44.INT**

**Unlawful Distribution, Manufacturing, Dispensing, Sale, or Possession for the Purposes of Sale of Any Controlled Substance—Interrogatory (Use of a Child)**

**If you find the defendant not guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.**

**If, however, you find the defendant guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the offense involve use of a child? (Answer “Yes” or “No”)**

**The offense involved use of a child only if:**

**1. the defendant solicited, induced, encouraged,**

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intimidated, employed, hired, or procured a child under the age of eighteen, whether or not the defendant knew the age of the child, to act as his [her] agent to assist in the unlawful distribution, manufacturing, dispensing, sale, or possession for the purposes of sale of any controlled substance at the time of the commission of [insert name(s) of felony offense(s) from Article 18, Part 4].

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-18-407(1)(e), C.R.S. 2019.

2. See Instruction F:13 (defining “agent”); Instruction F:14 (defining “assist”); see, e.g., Instruction E:28 (special verdict form).

### 18:45.INT

#### **Any Felony Controlled Substance Conviction Under Part 4—Interrogatory (Continuing Criminal Enterprise With Five or More Other Persons)**

If you find the defendant not guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of [insert name(s) of felony offense(s) from Article 18,



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**Part 4], you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Did the offense involve a criminal enterprise?  
(Answer “Yes” or “No”)**

**The offense involved a criminal enterprise only if:**

- 1. the defendant engaged in a continuing criminal enterprise by committing [insert name of felony offense from Article 18, Part 4], and**
- 2. the [repeat name of offense] was part of a continuing series, in which, on separate occasions, two or more of the following offenses were committed: [insert name(s) of felony offense(s) from Article 18, Part 4], and**
- 3. the continuing series of offenses was undertaken by the defendant in concert with five or more other persons with respect to whom the defendant occupied a position of organizer, supervisor, or any other position of management, and**
- 4. the defendant obtained substantial income or resources from the continuing series of offenses.**

**The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**



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### COMMENT

1. See § 18-18-407(1)(f), C.R.S. 2019.

2. See Instruction F:268 (defining “person”); see, e.g., Instruction E:28 (special verdict form).

### 18:46.INT

#### **Selling, Distributing, Possessing With Intent to Distribute, Manufacturing, or Attempting to Manufacture Any Controlled Substance—Interrogatory (Protected Area)**

If you find the defendant not guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of [insert name(s) of felony offense(s) from Article 18, Part 4], you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Did the defendant commit the offense in a protected area? (Answer “Yes” or “No”)**

**The defendant committed the offense in a protected area only if:**

1. the defendant committed the selling, distributing, possessing with intent to distribute, manufacturing, or attempt to manufacture any controlled substance, [within or upon the grounds of any public or private elementary school, middle school, junior high school, high school, vocational school, or public housing development] [within one thousand feet of the perimeter of any such school or public housing development grounds on any street, alley, parkway, sidewalk, public park, playground, or other area or premises that was accessible to the public] [within any private dwelling that was accessible to the public for the

**purpose of the unlawful sale, distribution, use, exchange, manufacture, or attempted manufacture of any controlled substance] [in any school vehicle, while the school vehicle was engaged in the transportation of students].**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

1. *See* § 18-18-407(1)(g), C.R.S. 2019.

2. *See* Instruction F:185 (defining “with intent”); Instruction F:300 (defining “public housing development”); *see, e.g.*, Instruction E:28 (special verdict form).

3. The term “school vehicle” is defined in section 42-1-102(88.5), C.R.S. 2019.

**18:47**

**Keeping, Maintaining, Controlling, Renting, or Making Available Property for Unlawful Distribution or Transportation of Controlled Substances**

**The elements of the crime of keeping, maintaining, controlling, renting, or making available property for unlawful distribution or transportation of controlled substances are:**

**1. That the defendant,**



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2. in the State of Colorado, at or about the date and place charged,

3. knowingly or intentionally,

4. kept, maintained, controlled, rented, leased, or made available for use any store, shop, warehouse, dwelling, building, vehicle, vessel, aircraft, room, enclosure, or other structure or place,

5. which he [she] knew was resorted to for the purpose of unlawfully keeping for distribution, transporting for distribution, or distributing controlled substances.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of keeping, maintaining, controlling, renting, or making available property for unlawful distribution or transportation of controlled substances.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of keeping, maintaining, controlling, renting, or making available property for unlawful distribution or transportation of controlled substances.

### COMMENT

1. See § 18-18-411(1), C.R.S. 2019.

2. See Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:102 (defining “distribute”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”).



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3. See Instruction H:70 (defining the affirmative defenses of “lack of knowledge” and “reported conduct”).

4. If the defendant is not charged with one of the referenced controlled substance offenses, give the jury the elemental instruction for the referenced offense(s) without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction(s) for the referenced offense(s) immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense(s).

**18:48**

### **Maintaining a Place for Unlawful Manufacture of Controlled Substances**

**The elements of the crime of maintaining a place for unlawful manufacture of controlled substances are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly or intentionally,**
- 4. opened or maintained any place,**
- 5. knowing that it was resorted to for the purpose of unlawfully manufacturing a controlled substance.**

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of maintaining a place for unlawful manufacture of controlled substances.**

**After considering all the evidence, if you decide**

## OFFENSES RELATED TO CONTROLLED SUBSTANCES

**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of maintaining a place for unlawful manufacture of controlled substances.**

### COMMENT

1. *See* § 18-18-411(2)(a), C.R.S. 2019.

2. *See* Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:206 (defining “manufacture”).

3. *See* Instruction H:70 (defining the affirmative defenses of “lack of knowledge” and “reported conduct”).

4. If the defendant is not charged with unlawful manufacture of a controlled substance, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. *See* Instruction 18:05 (unlawful manufacture of a controlled substance). Place the elemental instruction for that offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for unlawfully manufacturing a controlled substance.

## 18:49

### **Providing a Place for Unlawful Manufacture of Controlled Substances**

**The elements of the crime of providing a place for unlawful manufacture of controlled substances are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly or intentionally,**
- 4. managed or controlled any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and**

5. rented, leased, or made available for use, with or without compensation, the building, room, or enclosure,

6. knowing that it was resorted to for the purpose of unlawfully manufacturing a controlled substance.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of providing a place for unlawful manufacture of controlled substances.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of providing a place for unlawful manufacture of controlled substances.

#### COMMENT

1. See § 18-18-411(2)(b), C.R.S. 2019.

2. See Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:206 (defining “manufacture”).

3. See Instruction H:70 (defining the affirmative defenses of “lack of knowledge” and “reported conduct”).

4. If the defendant is not charged with unlawfully manufacturing a controlled substance, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. See Instruction 18:05 (unlawful manufacture of a controlled substance). Place the elemental instruction for that offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for unlawfully manufacturing a controlled substance.



18:50

**Abusing Toxic Vapors**

**The elements of the crime of abusing toxic vapors are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. smelled or inhaled the fumes of toxic vapors; or possessed, bought, or used the fumes of toxic vapors; or aided any other person to use the fumes of toxic vapors,**
- 5. for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of abusing toxic vapors.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of abusing toxic vapors.**

**COMMENT**

1. See § 18-18-412(1), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:268 (defining “person”); Instruction F:281 (defining “possession”).

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3. The Committee has not drafted a model instruction defining “toxic vapors” because the list of qualifying substances is lengthy. *See* § 18-18-412(3), C.R.S. 2019. The court should draft an instruction based on the relevant portion(s) of the statutory definition.

4. The statute includes an exemption from criminal liability. *See* § 18-18-412(1), C.R.S. 2019 (“This subsection (1) shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.”). However, the Committee has not drafted a model affirmative defense instruction.

**18:51**

### **Unlawful Possession of Materials to Make Methamphetamine and Amphetamine**

**The elements of the crime of unlawful possession of materials to make methamphetamine and amphetamine are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. possessed ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers,**
- 4. with the intent to use the product as an immediate precursor in the manufacture of any controlled substance.**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful possession of materials to make methamphetamine and amphetamine.**

**After considering all the evidence, if you decide**

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the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful possession of materials to make methamphetamine and amphetamine.

### COMMENT

1. See § 18-18-412.5, C.R.S. 2019.

2. See Instruction F:179 (defining “immediate precursor”); Instruction F:185 (defining “with intent”); Instruction F:281 (defining “possession”).

### 18:52

#### Sale or Distribution of Materials to Manufacture Controlled Substances

The elements of the crime of sale or distribution of materials to manufacture controlled substances are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. sold or distributed,
4. chemicals, supplies, or equipment, and
5. knew, or reasonably should have known or believed, that a person intended to use the chemicals, supplies, or equipment to illegally manufacture a controlled substance.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-



## COLORADO JURY INSTRUCTIONS—CRIMINAL

**dant guilty of sale or distribution of materials to manufacture controlled substances.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sale or distribution of materials to manufacture controlled substances.**

### COMMENT

1. *See* § 18-18-412.7(1), C.R.S. 2019.

2. *See* Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:102 (defining “distribute”); Instruction F:327 (defining “sale”).

3. If the defendant is not charged with unlawful manufacture of a controlled substance, give the jury the elemental instruction for that offense without the two concluding paragraphs that explain the burden of proof. *See* Instruction 18:05 (unlawful manufacture of a controlled substance). Place the elemental instruction for that offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for unlawfully manufacturing a controlled substance.

### 18:53

#### **Retail Sale of Methamphetamine Precursor Drugs (Delivery of an Excess Amount Within Twenty-Four Hours)**

**The elements of the crime of retail sale of methamphetamine precursor drugs (delivery of an excess amount within twenty-four hours) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. delivered in or from a store,

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5. to the same individual,
  6. during any twenty-four-hour period,
  7. more than three and six-tenths grams of a methamphetamine precursor drug or a combination of two or more methamphetamine precursor drugs.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of retail sale of methamphetamine precursor drugs (delivery of an excess amount within twenty-four hours).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of retail sale of methamphetamine precursor drugs (delivery of an excess amount within twenty-four hours).

### COMMENT

1. See § 18-18-412.8(2)(a), C.R.S. 2019.

2. See Instruction F:91 (defining “deliver”); Instruction F:195 (defining “knowingly”); Instruction F:229 (defining “methamphetamine precursor drug”); Instruction F:353 (defining “store”); see also Instruction F:269 (defining “person,” as used in section 18-18-412.8(2)(a)).

3. See Instruction H:72 (affirmative defense of “lack of knowledge and participation”).

**18:54**

### **Purchase of an Excess Amount of Methamphetamine Precursor Drugs Within Twenty-Four Hours**

**The elements of the crime purchase of an excess**

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**amount methamphetamine precursor drugs within twenty-four hours are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. purchased more than three and six-tenths grams of a methamphetamine precursor drug or a combination of two or more methamphetamine precursor drugs,**
- 5. during any twenty-four-hour period.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of retail sale of purchase of an excess amount methamphetamine precursor drugs within twenty-four hours.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of purchase of an excess amount methamphetamine precursor drugs within twenty-four hours.**

**COMMENT**

1. See § 18-18-412.8(2)(b), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:229 (defining “methamphetamine precursor drug”); *see also* Instruction F:269 (defining “person,” as used in section 18-18-412.8(2)(b)).



18:55

**Retail Sale of Methamphetamine Precursor Drugs  
(Improper Display)**

The elements of the crime of retail sale of methamphetamine precursor drugs (improper display) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. offered for retail sale,
5. in or from a store,
6. a methamphetamine precursor drug,
7. that was offered for sale or stored or displayed prior to sale in an area of the store to which the public was allowed access.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of retail sale of methamphetamine precursor drugs (improper display).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of retail sale of methamphetamine precursor drugs (improper display).

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### COMMENT

1. See § 18-18-412.8(2)(c), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:229 (defining “methamphetamine precursor drug”); Instruction F:353 (defining “store”).

3. See Instruction H:72 (affirmative defense of “lack of knowledge and participation”).

### 18:56

#### **Retail Delivery of Methamphetamine Precursor Drugs to a Minor**

The elements of the crime of retail delivery of methamphetamine precursor drugs to a minor are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. delivered in a retail sale in or from a store,
5. a methamphetamine precursor drug,
6. to a minor under eighteen years of age.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of retail delivery of methamphetamine precursor drugs to a minor.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you

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**should find the defendant not guilty of retail delivery of methamphetamine precursor drugs to a minor.**

### COMMENT

1. *See* § 18-18-412.8(2.5)(a), (3)(a), C.R.S. 2019.

2. *See* Instruction F:91 (defining “deliver”); Instruction F:195 (defining “knowingly”); Instruction F:229 (defining “methamphetamine precursor drug”); Instruction F:327 (defining “sale”); Instruction F:353 (defining “store”); *see also* Instruction F:269 (defining “person,” as used in section 18-18-412.8(2.5)(a)).

3. *See* Instruction H:71 (affirmative defense of “reasonable reliance on identification”); Instruction H:72 (affirmative defense of “lack of knowledge and participation”).

**18:57**

### **Unauthorized Possession of a Prescribed or Dispensed Controlled Substance**

**The elements of the crime of unauthorized possession of a prescribed or dispensed controlled substance are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. possessed any controlled substance that had been prescribed or dispensed by a practitioner,**
- 4. other than in the container in which it was delivered to him [her], and**
- 5. was not the legal owner, or a person acting at the direction of the legal owner of the controlled substance.**

**[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**



## COLORADO JURY INSTRUCTIONS—CRIMINAL

**the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized possession of a prescribed or dispensed controlled substance.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized possession of a prescribed or dispensed controlled substance.**

### COMMENT

1. *See* § 18-18-413, C.R.S. 2019.

2. *See* Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:100 (defining “dispense”); Instruction F:268 (defining “person”); Instruction F:282 (defining “practitioner”).

3. + *See* *People v. Gonzales*, 2017 COA 62, ¶ 15, 415 P.3d 846, 849 (rejecting the argument that this crime functions as an affirmative defense to the crime of unlawful possession of a controlled substance, and stating instead that this crime “is itself a separate offense, and the exception for ‘a person acting at the direction of the legal owner of the controlled substance’ is an element the prosecution must disprove when charging someone”).

4. + In 2019, the Committee added Comment 3.

**18:58**

### **Unauthorized Possession or Dispensing of a Schedule I Controlled Substance**

**The elements of the crime of unauthorized possession or dispensing of a schedule I controlled substance are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. dispensed or possessed a schedule I controlled substance, and**

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4. was not a researcher who was registered under federal law to conduct research with that schedule I controlled substance.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized possession or dispensing of a schedule I controlled substance.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized possession or dispensing of a schedule I controlled substance.

### COMMENT

1. See § 18-18-414(1)(a), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”); Instruction F:281 (defining “possession”); Instruction F:282 (defining “practitioner”); Instruction F:315 (defining “researcher”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

4. + In 2019, the Committee updated the quotation in Comment 3 to reflect a legislative amendment. See Ch. 136, sec. 109, § 18-18-414(1), 2019 Colo. Sess. Laws 613, 1680.



18:59

**Unauthorized Dispensing of a Schedule II Controlled Substance**

The elements of the crime of unauthorized dispensing of a schedule II controlled substance are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. dispensed any schedule II controlled substance,
4. other than from a pharmacy pursuant to a written order or an order electronically transmitted in accordance with [insert description of relevant provision(s) from 21 C.F.R. 1311], by any practitioner in the course of his [her] professional practice, or by a pharmacist in an emergency situation who [insert a description of relevant requirements from section 18-18-414(2)].
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized dispensing of a schedule II controlled substance.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized dispensing of a schedule II controlled substance.

**COMMENT**

1. See § 18-18-414(1)(b), (2), C.R.S. 2019.



## OFFENSES RELATED TO CONTROLLED SUBSTANCES

2. See Instruction F:100 (defining “dispense”); Instruction F:255 (defining “order”); Instruction F:275 (defining “pharmacy”); Instruction F:282 (defining “practitioner”).

3. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

4. + In 2019, the Committee updated the quotation in Comment 3 to reflect a legislative amendment. See Ch. 136, sec. 109, § 18-18-414(1), 2019 Colo. Sess. Laws 613, 1680.

### 18:60

#### Unauthorized Dispensing of a Schedule Iii, Iv, or V Controlled Substance

The elements of the crime of unauthorized dispensing of a schedule III, IV, or V controlled substance are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. dispensed any schedule III, IV, or V controlled substance,
4. other than from a pharmacy pursuant to a written, oral, mechanically produced, computer generated, electronically transmitted, or facsimile transmitted order or as a practitioner in the course of his [her] professional practice.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements be-

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yond a reasonable doubt, you should find the defendant guilty of unauthorized dispensing of a schedule III, IV, or V controlled substance.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized dispensing of a schedule III, IV, or V controlled substance.

### COMMENT

1. See § 18-18-414(1)(c), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”); Instruction F:255 (defining “order”); Instruction F:275 (defining “pharmacy”); Instruction F:282 (defining “practitioner”).

3. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

4. + In 2019, the Committee updated the quotation in Comment 3 to reflect a legislative amendment. See Ch. 136, sec. 109, § 18-18-414(1), 2019 Colo. Sess. Laws 613, 1680.

**18:61**

### **Dispensing Marijuana or Marijuana Concentrate**

The elements of the crime of dispensing marijuana or marijuana concentrate are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. dispensed any marijuana or marijuana concentrate.

[4. and that the defendant’s conduct was not

## OFFENSES RELATED TO CONTROLLED SUBSTANCES

**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of dispensing marijuana or marijuana concentrate.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of dispensing marijuana or marijuana concentrate.**

### COMMENT

1. *See* § 18-18-414(1)(d), C.R.S. 2019.

2. *See* Instruction F:100 (defining “dispense”); Instruction F:208 (defining “marijuana”); Instruction F:210 (defining “marijuana concentrate”).

3. *See* Instruction H:68 (affirmative defense of “medical marijuana”); Instruction H:69 (affirmative defense of “recreational marijuana”); *see also* Colo. Const. Art. XVIII, § 16, (4) (“Lawful operation of marijuana-related facilities”); § 18-18-433, C.R.S. 2019 (“The provisions of this part 4 do not apply to a person twenty-one years of age or older acting in conformance with section 16 of article XVIII of the state constitution and do not apply to a person acting in conformance with section 14 of article XVIII of the state constitution”).

4. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

5. + In 2019, the Committee updated the quotation in Comment 4 to reflect a legislative amendment. *See* Ch. 136, sec. 109, § 18-18-414(1), 2019 Colo. Sess. Laws 613, 1680.



18:62

### Excessive Refilling

The elements of the crime of excessive refilling are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. refilled a prescription for any schedule III, IV, or V controlled substance,
  4. more than six months after the date on which the prescription had been issued or more than five times.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of excessive refilling.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of excessive refilling.

### COMMENT

1. See § 18-18-414(1)(e), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

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3. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

4. + In 2019, the Committee updated the quotation in Comment 3 to reflect a legislative amendment. *See* Ch. 136, sec. 109, § 18-18-414(1), 2019 Colo. Sess. Laws 613, 1680.

### 18:63

#### Failure to File and Retain a Prescription

The elements of the crime of failure to file and retain a prescription are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a pharmacy, and
4. failed to file and retain a prescription as required in [insert a description of the relevant requirement(s) from section + 12-280-134, C.R.S. 2019].

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to file and retain a prescription.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to file and retain a prescription.

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### COMMENT

1. *See* § 18-18-414(1)(f), C.R.S. 2019.

2. *See* Instruction F:275 (defining “pharmacy”).

3. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

4. + In 2019, the Committee updated the statutory citation in the fourth element, along with the quotation in Comment 3, to reflect a legislative amendment. *See* Ch. 136, sec. 109, § 18-18-414(1)(f), 2019 Colo. Sess. Laws 613, 1680.

### 18:64

#### **Failure to Record and Maintain a Record of Hospital Dispensing**

**The elements of the crime of failure to record and maintain a record of hospital dispensing are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a hospital, and
4. failed to record and maintain a record of dispensing as provided in [insert a description of the relevant requirement(s) from section + 12-280-134 or 27-80-210, C.R.S. 2019].

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defen-



## OFFENSES RELATED TO CONTROLLED SUBSTANCES

**dant guilty of failure to record and maintain a record of hospital dispensing.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to record and maintain a record of hospital dispensing.**

### COMMENT

1. See § 18-18-414(1)(g), C.R.S. 2019.

2. See Instruction F:100 (defining “dispense”).

3. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

4. + In 2019, the Committee updated the statutory citation in the fourth element, along with the quotation in Comment 3, to reflect a legislative amendment. See Ch. 136, sec. 109, § 18-18-414(1)(g), 2019 Colo. Sess. Laws 613, 1680.

**18:65**

### **Refusal to Make a Record or File Available for Inspection**

**The elements of the crime of refusal to make a record or file available for inspection are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a [insert description from article 18 of title 18; part 1 of + article 280 of title 12; or part 2 of article 80 of title 27], and**
- 4. refused to make available for inspection and to accord full opportunity to check,**

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**5. any record or file of [insert description from article 18 of title 18; part 1 of + article 280 of title 12; or part 2 of article 80 of title 27].**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of refusal to make a record or file available for inspection.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of refusal to make a record or file available for inspection.**

### COMMENT

1. *See* § 18-18-414(1)(h), C.R.S. 2019.

2. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

3. + In 2019, the Committee updated the statutory citations in the third and fifth elements, along with the quotation in Comment 2, to reflect a legislative amendment. *See* Ch. 136, sec. 109, § 18-18-414(1)(h), 2019 Colo. Sess. Laws 613, 1680.

**18:66**

### Failure to Keep Records

**The elements of the crime of failure to keep records are:**

**1. That the defendant,**



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**2. in the State of Colorado, at or about the date and place charged,**

**3. was a [insert description from article 18 of title 18; part 1 of + article 280 of title 12; or part 2 of article 80 of title 27], and**

**4. failed to keep records of [insert description of requirement(s) from article 18 of title 18; part 1 of + article 280 of title 12; or part 2 of article 80 of title 27].**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to keep records.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to keep records.

## COMMENT

1. See § 18-18-414(1)(i), C.R.S. 2019.

2. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

3. + In 2019, the Committee updated the statutory citations in the third and fourth elements, along with the quotation in Comment 2, to reflect a legislative amendment. See Ch. 136, sec. 109, § 18-18-414(1)(i), 2019 Colo. Sess. Laws 613, 1680.



18:67

**Failure to Obtain a License or Registration**

The elements of the crime of failure to obtain a license or registration are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a [insert description from article 18 of title 18; part 1 of + article 280 of title 12; or part 2 of article 80 of title 27], and
4. failed to obtain a license or registration to [insert description of requirement(s) from article 18 of title 18; part 1 of + article 280 of title 12; or part 2 of article 80 of title 27].
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to obtain a license or registration.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to obtain a license or registration.

**COMMENT**

1. See § 18-18-414(1)(j), C.R.S. 2019.
2. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists,

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pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

3. + In 2019, the Committee updated the statutory citations in the third and fourth elements, along with the quotation in Comment 2, to reflect a legislative amendment. *See* Ch. 136, sec. 109, § 18-18-414(1)(j), 2019 Colo. Sess. Laws 613, 1680.

18:68

### Dispensing Without Labeling

The elements of the crime of dispensing without labeling are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. dispensed a controlled substance,
  4. other than as a practitioner for direct administration in the course of his [her] practice or for administration to [a] hospital inpatient[s], and
  5. failed to affix to the immediate container a label stating the name and address of the person from whom the controlled substance was dispensed; the date on which the controlled substance was dispensed; the number of the prescription as filed in the prescription files of the pharmacy which dispensed the prescription; the name of the prescribing practitioner; the directions for use of the controlled substance as contained in the prescription; and the name of the patient, and, if for an animal, the name of the owner.
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

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**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of dispensing without labeling.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of dispensing without labeling.**

### COMMENT

1. See § 18-18-414(1)(k), C.R.S. 2019.
2. See Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:100 (defining “dispense”); Instruction F:268 (defining “person”); Instruction F:282 (defining “practitioner”).
3. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.
4. + In 2019, the Committee updated the quotation in Comment 3 to reflect a legislative amendment. See Ch. 136, sec. 109, § 18-18-414(1), 2019 Colo. Sess. Laws 613, 1680.

**18:69**

### **Dispensing Without Labeling by a Practitioner**

**The elements of the crime of dispensing without labeling by a practitioner are:**

1. **That the defendant,**
2. **in the State of Colorado, at or about the date and place charged,**
3. **was a practitioner, and**
4. **dispensed a controlled substance,**



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5. other than by direct administration in the course of his [her] practice,

6. without affixing to the immediate container a label bearing directions for use of the controlled substance, the practitioner's name and registry number, the name of the patient, the date, and, if for an animal, the name of the owner.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of dispensing without labeling by a practitioner.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of dispensing without labeling by a practitioner.

### COMMENT

1. See § 18-18-414(1)(l), C.R.S. 2019.

2. See Instruction F:09 (defining "administer"); Instruction F:73 (defining "controlled substance" by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:100 (defining "dispense"); Instruction F:282 (defining "practitioner").

3. Section 18-18-414(1) excepts from criminal liability acts authorized by + "this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)]," and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

4. + In 2019, the Committee updated the quotation in Comment 3 to reflect a legislative amendment. See Ch. 136, sec. 109, § 18-18-414(1), 2019 Colo. Sess. Laws 613, 1680.

18:70

**Unlawful Administration of a Controlled Substance**

**The elements of the crime of unlawful administration of a controlled substance are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. administered a controlled substance,**
- 4. other than to the patient for whom it was prescribed.**
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful administration of a controlled substance.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful administration of a controlled substance.**

**COMMENT**

1. See § 18-18-414(1)(m), C.R.S. 2019.
2. See Instruction F:09 (defining “administer”); Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019).
3. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418,

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C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

4. + In 2019, the Committee updated the quotation in Comment 3 to reflect a legislative amendment. *See* Ch. 136, sec. 109, § 18-18-414(1), 2019 Colo. Sess. Laws 613, 1680.

### 18:71

#### **Unlawful Possession of a Controlled Substance by a Practitioner or Pharmacy**

**The elements of the crime of unlawful possession of a controlled substance by a practitioner or pharmacy are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- [3. was a practitioner, and**
- 4. possessed a controlled substance,**
- 5. which was not obtained from a pharmacy and which was received from a person who was not licensed as a manufacturer, distributor, or practitioner.]**

- [3. was a pharmacy, and**
- 4. possessed a controlled substance,**
- 5. which was received from any person who was not licensed as a manufacturer or distributor, and which was not bought from another pharmacy.]**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**



the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful possession of a controlled substance by a practitioner or pharmacy.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful possession of a controlled substance by a practitioner or pharmacy.

#### COMMENT

1. *See* § 18-18-414(1)(n), C.R.S. 2019.

2. *See* Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:104 (defining “distributor”); Instruction F:268 (defining “person”); Instruction F:275 (defining “pharmacy”); Instruction F:281 (defining “possession”); Instruction F:282 (defining “practitioner”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The term “manufacture” is defined by section 18-18-102(17), C.R.S. 2019. *See* Instruction F:206 (defining “manufacture”). However, the term “manufacturer” is not separately defined for purposes of Article 18 of title 18.

4. + Section 18-18-414(1) excepts from criminal liability acts authorized by “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

5. + In 2019, the Committee added Comment 4.

#### 18:72

### Unlawful Transfer of Drug Precursors

The elements of the crime of unlawful transfer of drug precursors are:

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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. knowingly,
  4. transferred drug precursors,
  5. to any person who used them for an unlawful activity.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful transfer of drug precursors.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful transfer of drug precursors.

### COMMENT

1. See § 18-18-414(1)(o), C.R.S. 2019.
2. See Instruction F:195 (defining “knowingly”); Instruction F:269 (defining “person”).
3. The term “drug precursors” is not defined by statute.
4. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.
4. + In 2019, the Committee updated the quotation in Comment 3

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to reflect a legislative amendment. *See* Ch. 136, sec. 109, § 18-18-414(1), 2019 Colo. Sess. Laws 613, 1680.

18:73

### Unlawfully Obtaining Drug Precursors

The elements of the crime of unlawfully obtaining drug precursors are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. acquired or obtained, or attempted to acquire or obtain, possession of a drug precursor,
5. by misrepresentation, fraud, forgery, deception, or subterfuge.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully obtaining drug precursors.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully obtaining drug precursors.

### COMMENT

1. *See* § 18-18-414(1)(q), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).



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3. The term “drug precursors” is not defined by statute.

4. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

5. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

6. In 2015, the Committee removed the reference to Instruction G2:01 in Comment 2, and it added Comment 5.

7. + In 2019, the Committee updated the quotation in Comment 4 to reflect a legislative amendment. *See* Ch. 136, sec. 109, § 18-18-414(1), 2019 Colo. Sess. Laws 613, 1680.

### 18:74

#### Unlawfully Furnishing or Omitting Material Information

**The elements of the crime of unlawfully furnishing or omitting material information are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. furnished false or fraudulent material information in, or omitted any material information from,
5. a[n] [insert description of application, report, or other document required to be kept or filed under article 18 of title 18; part 1 of + article 280 of title 12; part 2 of article 80 of title 27; or any

record required to be kept by article 18 of title 18; part 1 of article 280 of title 12; or part 2 of article 80 of title 27].

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawfully furnishing or omitting material information.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawfully furnishing or omitting material information.

#### COMMENT

1. See § 18-18-414(1)(r), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”).

3. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

4. + In 2019, the Committee updated the statutory citations in the fifth element, along with the quotation in Comment 3, to reflect a legislative amendment. See Ch. 136, sec. 109, § 18-18-414(1)(r), 2019 Colo. Sess. Laws 613, 1680.

18:75

#### Refusal of Entry for an Inspection

The elements of the crime of refusal of entry for an inspection are:

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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was a [insert description from article 18 of title 18; part 1 of + article 280 of title 12; or part 2 of article 80 of title 27], and
  4. refused entry into any premises,
  5. for an inspection authorized by [insert description from article 18 of title 18; part 1 of + article 280 of title 12; or part 2 of article 80 of title 27].
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of refusal of entry for an inspection.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of refusal of entry for an inspection.

### COMMENT

1. See § 18-18-414(1)(t), C.R.S. 2019.

2. Section 18-18-414(1) excepts from criminal liability acts authorized by + “this article 18 or in article 280 of title 12 [(pharmacists, pharmacy businesses, and pharmaceuticals)],” and section 18-18-418, C.R.S. 2019, lists numerous exemptions (e.g., governmental officials acting pursuant to their official duties, teachers and students of chemistry classes, and persons using peyote in religious ceremonies). However, the Committee has not drafted model affirmative defense instructions.

3. + In 2019, the Committee updated the statutory citations in the



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third and fifth elements, along with the quotation in Comment 2, to reflect a legislative amendment. *See* Ch. 136, sec. 109, § 18-18-414(1)(t), 2019 Colo. Sess. Laws 613, 1680.

**18:76**

### **Obtaining a Controlled Substance by Fraud or Deceit**

**The elements of the crime of obtaining a controlled substance by fraud or deceit are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. obtained a controlled substance or procured the administration of a controlled substance,**
- 4. by fraud, deceit, misrepresentation, or subterfuge; or by the forgery or alteration of an order; or by the concealment of a material fact; or by the use of a false name or the giving of a false address.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of obtaining a controlled substance by fraud or deceit.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of obtaining a controlled substance by fraud or deceit.**

### **COMMENT**

- 1. *See* § 18-18-415(1)(a), C.R.S. 2019.**

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2. See Instruction F:09 (defining “administer”); Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:255 (defining “order”).

**18:77**

### **Making a False Statement Related to a Controlled Substance**

**The elements of the crime of making a false statement related to a controlled substance are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. willfully,**
- 4. made a false statement in any required order, report, or record of [insert a description of the requirement, from article 18 of title 18].**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of making a false statement related to a controlled substance.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of making a false statement related to a controlled substance.**

### **COMMENT**

1. See § 18-18-415(1)(c), C.R.S. 2019.
2. See Instruction F:73 (defining “controlled substance” by referring

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users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:195 (defining “willfully”); Instruction F:255 (defining “order”).

**18:78**

### **False Act for the Purpose of Obtaining a Controlled Substance**

The elements of the crime of false act for the purpose of obtaining a controlled substance are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. for the purpose of obtaining a controlled substance,
4. falsely assumed the title of, or represented himself [herself] to be, a manufacturer, distributor, practitioner, or other person authorized by law to obtain a controlled substance.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false act for the purpose of obtaining a controlled substance.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false act for the purpose of obtaining a controlled substance.

#### **COMMENT**

1. See § 18-18-415(1)(d), C.R.S. 2019.



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2. See Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:104 (defining “distributor”); Instruction F:282 (defining “practitioner”).

3. The term “manufacture” is defined by § 18-18-102(17), C.R.S. 2019. See Instruction F:206 (defining “manufacture”). However, the term “manufacturer” is not separately defined for purposes of Article 18 of title 18.

### 18:79

#### **Making or Uttering a False or Forged Order**

**The elements of the crime of making or uttering a false or forged order are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. made or uttered,**
- 4. any false or forged order.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of making or uttering a false or forged order.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of making or uttering a false or forged order.**

#### COMMENT

1. See § 18-18-415(1)(e), C.R.S. 2019.

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2. See Instruction F:255 (defining “order”); *see also* Instruction F:385 (defining “utter,” for purposes of forgery and impersonation offenses).

**18:80**

### **Affixing a False or Forged Label**

**The elements of the crime of affixing a false or forged label are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. affixed any false or forged label,**
- 4. to a package or receptacle containing a controlled substance.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of affixing a false or forged label.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of affixing a false or forged label.**

### **COMMENT**

1. See § 18-18-415(1)(f), C.R.S. 2019.

2. See Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019).

## OFFENSES RELATED TO CONTROLLED SUBSTANCES

18:81

### Inducing Consumption by Fraudulent Means

The elements of the crime of inducing consumption by fraudulent means are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. surreptitiously, or by means of fraud, misrepresentation, suppression of truth, deception, or subterfuge,
4. caused any other person to unknowingly consume or receive the direct administration of any controlled substance.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of inducing consumption by fraudulent means.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of inducing consumption by fraudulent means.

#### COMMENT

1. See § 18-18-416(1), C.R.S. 2019.

2. See Instruction F:09 (defining “administer”); Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019).

3. The statute includes an exemption from criminal liability. See



§ 18-18-416(1), C.R.S. 2019 (“except that nothing in this section shall diminish the scope of health care authorized by law”). However, the Committee has not drafted a model affirmative defense instruction.

**18:82**

**Manufacturing or Distributing an Imitation Controlled Substance, or Possessing an Imitation Controlled Substance With Intent to Distribute**

The elements of the crime of manufacturing or distributing an imitation controlled substance, or possessing an imitation controlled substance with intent to distribute are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. manufactured, distributed, or possessed with intent to distribute an imitation controlled substance.

[4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of manufacturing or distributing an imitation controlled substance, or possessing an imitation controlled substance with intent to distribute.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of manufacturing or distributing an imitation controlled substance, or possessing an imitation controlled substance with intent to distribute.

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### COMMENT

1. See § 18-18-422(1)(a), C.R.S. 2019.

2. See Instruction F:103 (defining “distribute”); Instruction F:177 (defining “imitation controlled substance,” and incorporating the considerations enumerated in section 18-18-421(1)); Instruction F:207 (defining “manufacture”); Instruction F:281 (defining “possession”); Instruction F:185 (defining “with intent”).

3. Section 18-18-424, C.R.S. 2019, establishes exemptions from criminal liability for persons who are licensed, registered, or otherwise authorized. However, the Committee has not drafted model affirmative defense instructions.

4. Section 18-18-421(1), C.R.S. 2019, lists five factors that the trier of fact may consider, in addition to all other relevant factors, in determining whether a substance is an imitation controlled substance. Rather than include these factors in a special instruction, the Committee has included them in Instruction F:177 (defining “imitation controlled substance”).

5. In *People v. Moore*, 674 P.2d 354, 358 (Colo. 1984), and *People v. Pharr*, 696 P.2d 235, 236 (Colo. 1984), the supreme court held, under an earlier version of the imitation controlled substances statute, that a mens rea of “knowingly” was implied. However, in *People v. Taylor*, 131 P.3d 1158, 1163 (Colo. App. 2005), a division of the court of appeals held that, because “the General Assembly amended the statute to eliminate any reference to express or implied representations concerning the nature of the imitation controlled substance,” there no longer is a “requirement that a defendant knowingly purport that a substance is a controlled substance.”

### 18:83

#### **Distributing an Imitation Controlled Substance to a Minor**

**The elements of the crime of distributing an imitation controlled substance to a minor are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was an adult, and**



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**4. distributed an imitation controlled substance to a minor who was at least two years younger than the defendant.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of distributing an imitation controlled substance to a minor.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of distributing an imitation controlled substance to a minor.**

**COMMENT**

1. See § 18-18-422(2)(a), C.R.S. 2019.
2. See Instruction F:103 (defining “distribute”); Instruction F:177 (defining “imitation controlled substance,” and incorporating the considerations enumerated in section 18-18-421(1)).
3. See Instruction 18:82, Comments 3–5.
4. Article 18 does not define the terms “adult” and “minor.”

**18:84**

**Advertising an Imitation Controlled Substance**

**The elements of the crime of advertising an imitation controlled substance are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. placed in a newspaper, magazine, handbill, or**



## OFFENSES RELATED TO CONTROLLED SUBSTANCES

other publication or posted or distributed in any public place,

4. an advertisement or solicitation which he [she] knew would promote the distribution of imitation controlled substances.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of advertising an imitation controlled substance.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of advertising an imitation controlled substance.

### COMMENT

1. See § 18-18-422(3)(a), C.R.S. 2019.

2. See Instruction F:103 (defining “distribute”); Instruction F:177 (defining “imitation controlled substance,” and incorporating the considerations enumerated in section 18-18-421(1)).

3. See Instruction 18:82, Comments 3–5.

### 18:85.SP

#### Imitation Controlled Substance Offenses—Special Instruction (Erroneous Belief No Defense)

A defendant's belief that an imitation controlled substance was a genuine controlled substance is not a defense to [insert name(s) of imitation controlled substance offense(s)].

### COMMENT

1. See § 18-18-422(4), C.R.S. 2019.

18:86

**Manufacturing or Delivering a Counterfeit Controlled Substance, or Possessing a Counterfeit Controlled Substance With Intent to Manufacture or Deliver**

The elements of the crime of manufacturing or delivering a counterfeit controlled substance, or possessing a counterfeit controlled substance with intent to manufacture or deliver, are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly or intentionally,
4. manufactured, delivered, or possessed with intent to manufacture or deliver,
5. a controlled substance which, or the container or labeling of which, without authorization, bore the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who in fact manufactured, distributed, or dispensed the substance.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of manufacturing or delivering a counterfeit controlled substance, or possessing a counterfeit controlled substance with intent to manufacture or deliver.

After considering all the evidence, if you decide

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**the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of manufacturing or delivering a counterfeit controlled substance, or possessing a counterfeit controlled substance with intent to manufacture or deliver.**

### COMMENT

1. See § 18-18-423(1), C.R.S. 2019.

2. See Instruction F:101 (defining “dispenser”); Instruction F:73 (defining “controlled substance” by referring users to the statutory schedules referenced in section § 18-18-102(5), C.R.S. 2019); Instruction F:185 (defining “intentionally” and “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:206 (defining “manufacture”); Instruction F:281 (defining “possession”); Instruction F:373 (defining “trademark”).

3. Section 18-18-424, C.R.S. 2019, establishes exemptions from criminal liability for persons who are licensed, registered, or otherwise authorized. However, the Committee has not drafted model affirmative defense instructions.

## 18:87

### **Making, Distributing, or Possessing a Counterfeit Drug Implement**

**The elements of the crime of making, distributing, or possessing a counterfeit drug implement are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly or intentionally,
4. made, distributed, or possessed a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof.



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[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of making, distributing, or possessing a counterfeit drug implement.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of making, distributing, or possessing a counterfeit drug implement.

### COMMENT

1. See § 18-18-423(2), C.R.S. 2019.

2. See Instruction F:112 (defining “drug”); Instruction F:185 (defining “intentionally”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”); Instruction F:373 (defining “trademark”).

3. Section 18-18-424, C.R.S. 2019, establishes exemptions from criminal liability for persons who are licensed, registered, or otherwise authorized. However, the Committee has not drafted model affirmative defense instructions.

**18:88**

### Possession of Drug Paraphernalia

The elements of the crime of possession of drug paraphernalia are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. possessed drug paraphernalia, and

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**5. knew or reasonably should have known that the drug paraphernalia could be used under circumstances to commit the offense[s] of [insert name(s) of controlled substance offense(s)].**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of drug paraphernalia.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of drug paraphernalia.**

### COMMENT

1. *See* § 18-18-428(1), C.R.S. 2019.

2. *See* Instruction F:113 (defining “drug paraphernalia”); Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

3. *See* *Lee v. Smith*, 772 P.2d 82, 87 (Colo. 1989) (construing the offense of possession of drug paraphernalia, then codified at section 12-22-504, as requiring a culpable mental state of “knowingly”).

4. Section 18-18-428(1)(b), C.R.S. 2019, establishes an exemption from criminal liability for “any minuscule, residual controlled substance that may be present in a used hypodermic needle or syringe” if the location of the needle or syringe is disclosed in specified circumstances. However, the Committee has not drafted a model affirmative defense instruction.

5. Section 18-18-430.5, C.R.S. 2019, establishes an exemption for any person “participating as an employee, volunteer, or participant in an approved syringe exchange program created pursuant to section 25-1-520, C.R.S.” However, the Committee has not drafted a model affirmative defense instruction.

6. Section 18-18-427(1), C.R.S. 2019, enumerates several factors that a court may consider in determining whether an object is drug

## COLORADO JURY INSTRUCTIONS—CRIMINAL

paraphernalia. And section 18-18-427(2) states that: “In the event a case brought pursuant to sections 18-18-425 to 18-18-430 is tried before a jury, the court shall hold an evidentiary hearing on issues raised pursuant to this section. Such hearing shall be conducted in camera.”

7. *See* § 18-18-426(2), C.R.S. 2019 (“‘Drug paraphernalia’” does not include any marijuana accessories as defined in section 16(2)(g) of article XVIII of the state constitution.”).

8. *See* Instruction H:32 (affirmative defense of “reporting an emergency drug or alcohol overdose event”).

9. If the defendant is not charged with the referenced controlled substance offense(s), give the jury the elemental instruction(s) for the controlled substance offense(s) without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction(s) for the controlled substance offense(s) immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the controlled substance offense(s).

10. In 2015, the Committee added Comment 4 and renumbered the remaining comments. *See* Ch. 76, sec. 1, § 18-18-428(1)(b), 2015 Colo. Sess. Laws 200, 200 to 01.

18:89

### **Manufacture, Sale, or Delivery of Drug Paraphernalia**

**The elements of the crime of manufacture, sale, or delivery of drug paraphernalia are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. sold or delivered, or possessed or manufactured with intent to sell or deliver,**
- 5. equipment, products, or materials,**
- 6. knowing, or under circumstances where one reasonably should have known, that the equipment, products, or materials could be used as drug paraphernalia.**



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[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of manufacture, sale, or delivery of drug paraphernalia.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of manufacture, sale, or delivery of drug paraphernalia.

### COMMENT

1. See § 18-18-429, C.R.S. 2019.

2. See Instruction F:113 (defining “drug paraphernalia”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:206 (defining “manufacture”); Instruction F:281 (defining “possession”); Instruction F:327 (defining “sale”).

3. See Instruction 18:88, Comments 3–6.

### 18:90

#### Advertisement of Drug Paraphernalia

The elements of the crime of advertisement of drug paraphernalia are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. placed an advertisement in any newspaper, magazine, handbill, or other publication, and
4. intended thereby to promote the sale in Colorado of equipment, products, or materials de-

## COLORADO JURY INSTRUCTIONS—CRIMINAL

**signed and intended for use as drug paraphernalia.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of advertisement of drug paraphernalia.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of advertisement of drug paraphernalia.**

### COMMENT

1. See § 18-18-430, C.R.S. 2019.
2. See Instruction F:113 (defining “drug paraphernalia”); Instruction F:185 (defining “intentionally” and “with intent”).
3. See Instruction 18:88, Comments 5–7.

## CHAPTER 20

### OFFENSES RELATED TO LIMITED GAMING

#### CHAPTER COMMENTS

1. Many offenses in this chapter revolve around conduct required or prohibited by the Limited Gaming Act of 1991, + §§ 44-30-101 to -1515, C.R.S. 2019 (“the Act”). Where appropriate, the court should review the pertinent provisions of the Act. It should then provide the jury with a special instruction explaining the relevant law and allowing the jury to apply that law to the facts of the case.

For example, the third element of Instruction 20:02 requires the jury to determine whether the defendant “failed to pay tax due under the Limited Gaming Act of 1991 within thirty days after the date the tax became due.” This raises a question of how tax becomes due under the Act. Therefore, the court should provide a special instruction

## OFFENSES RELATED TO LIMITED GAMING

explaining this process for the jury. *See* §§ 44-30-601 to -605, C.R.S. 2019. Armed with this instruction, the jury can then determine (1) whether a tax was due, and (2) whether the defendant in fact failed to pay it within the thirty-day timeframe.

2. Several offenses within this chapter provide for increased sentences where the defendant is a “repeating gambling offender,” as defined in section 18-20-102(2), C.R.S. 2019. The court should not ask the jury to make a finding regarding whether a defendant is a “repeating gambling offender.” Although COLJI-Crim. 27:13, 27:14, and 27:15 (1983) defined three separate offenses of “repeating gambling offender” based on section 18-10-102(9), C.R.S. 2019, the Committee is now of the view that the trial court should make this determination at sentencing. *See People v. Nunn*, 148 P.3d 222, 228 (Colo. App. 2006) (holding that, under the prior conviction exception to the rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), the defendant in habitual criminal proceedings “had no right to have a jury determine whether he was the person convicted in the prior cases”).

3. Section 18-20-115, C.R.S. 2019, provides as follows: “Nothing contained in this article shall be construed to modify, amend, or otherwise affect the validity of any provisions contained in” Chapter 10, Gambling Offenses. To the extent that this provision gives rise to any affirmative defenses, the Committee has not drafted model instructions for such defenses.

4. The Committee added this chapter in 2016.

5. In 2018, the Committee modified the statutory citations in Comment 1 to conform with a legislative reorganization. *See* Ch. 14, secs. 2, 4, §§ 44-30-101 to -1407, 2018 Colo. Sess. Laws 167, 168, 237 (repealing and relocating the Act).

6. + In 2019, the Committee modified the statutory citation in Comment 1 pursuant to new legislation. *See* Ch. 347, sec. 12, §§ 44-30-1501 to -1515, 2019 Colo. Sess. Laws 3209, 3216–31.

### 20:01

#### Failure to Pay Gaming Tax (Evasion)

**The elements of the crime of failure to pay gaming tax (evasion) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,



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**3. in attempting to defeat or evade a tax imposed by the Limited Gaming Act of 1991,**

**4. made a false or fraudulent return.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to pay gaming tax (evasion).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to pay gaming tax (evasion).**

**COMMENT**

1. *See* § 18-20-103(1)(a), C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Regarding whether a tax was imposed by the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

4. By its terms, this crime applies to “any person.” § 18-20-103(1). For the purposes of this offense, subsection (2) defines “person” as including “corporate officers having control or supervision of, or responsibility for, completing tax returns or making payments pursuant to” the Limited Gaming Act of 1991. Because that definition is inclusive rather than exclusive, the Committee has not included an element requiring that the defendant is a “person.” If the parties dispute whether the defendant qualifies as a “person” for the purposes of this crime, the court may give Instruction F:268.5 (defining “person” (limited gaming offenses)).

## OFFENSES RELATED TO LIMITED GAMING

5. In the absence of case law on point, the Committee takes no position on whether the word “attempting” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

20:02

### Failure to Pay Gaming Tax (Pay)

The elements of the crime of failure to pay gaming tax (pay) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. failed to pay tax due under the Limited Gaming Act of 1991 within thirty days after the date the tax became due.
- [4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to pay gaming tax (pay).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to pay gaming tax (pay).

### COMMENT

1. *See* § 18-20-103(1)(b), C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable



## COLORADO JURY INSTRUCTIONS—CRIMINAL

mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Regarding whether a tax payment was due under the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

4. The statute provides for a sentence enhancer when a person commits this crime “two or more times in any twelve-month period.” § 18-20-103(1)(d) (citing § 44-30-603(1)(b), C.R.S. 2019, which features the same language proscribed by this instruction). Because the court can constitutionally make this determination rather than the jury, and because the General Assembly has not specifically required a jury determination, the Committee has not drafted a model interrogatory. *See* *People v. Nunn*, 148 P.3d 222, 228 (Colo. App. 2006) (holding that, under the prior conviction exception to the rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), the defendant in habitual criminal proceedings “had no right to have a jury determine whether he was the person convicted in the prior cases”).

5. By its terms, this crime applies to “any person.” § 18-20-103(1). For the purposes of this offense, subsection (2) defines “person” as including “corporate officers having control or supervision of, or responsibility for, completing tax returns or making payments pursuant to” the Limited Gaming Act of 1991. Because that definition is inclusive rather than exclusive, the Committee has not included an element requiring that the defendant is a “person.” If the parties dispute whether the defendant qualifies as a “person” for the purposes of this crime, the court may give Instruction F:268.5 (defining “person” (limited gaming offenses)).

6. In 2018, the Committee modified the parenthetical citation in Comment 4 pursuant to a legislative amendment. *See* Ch. 14, sec. 16, § 18-20-103(1)(d), 2018 Colo. Sess. Laws 167, 241.

**20:03**

### **Failure to Pay Gaming Tax (File Return)**

**The elements of the crime of failure to pay gaming tax (file return) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**



## OFFENSES RELATED TO LIMITED GAMING

**3. failed to file a return required by the Limited Gaming Act of 1991 within thirty days after the date the return was due.**

**[4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to pay gaming tax (file return).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to pay gaming tax (file return).**

### COMMENT

1. *See* § 18-20-103(1)(c), C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Regarding whether a return was required by the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

4. The statute provides for a sentence enhancer when a person commits this crime “two or more times in any twelve-month period.” § 18-20-103(1)(d) (citing § 44-30-603(1)(c), C.R.S. 2019, which features the same language proscribed by this instruction). Because the court can constitutionally make this determination rather than the jury, and because the General Assembly has not specifically required a jury determination, the Committee has not drafted a model interrogatory. *See* *People v. Nunn*, 148 P.3d 222, 228 (Colo. App. 2006) (holding that, under the prior conviction exception to the rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), the defendant in habitual criminal proceedings “had no right to have a jury determine whether he was the person convicted in the prior cases”).

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5. By its terms, this crime applies to “any person.” § 18-20-103(1). For the purposes of this offense, subsection (2) defines “person” as including “corporate officers having control or supervision of, or responsibility for, completing tax returns or making payments pursuant to” the Limited Gaming Act of 1991. Because that definition is inclusive rather than exclusive, the Committee has not included an element requiring that the defendant is a “person.” If the parties dispute whether the defendant qualifies as a “person” for the purposes of this crime, the court may give Instruction F:268.5 (defining “person” (limited gaming offenses)).

6. In 2018, the Committee modified the parenthetical citation in Comment 4 pursuant to a legislative amendment. *See* Ch. 14, sec. 16, § 18-20-103(1)(d), 2018 Colo. Sess. Laws 167, 241.

**20:04**

### **False Presentation to Commission**

**The elements of the crime of false presentation to commission are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. willfully,**
- 4. aided or assisted in, or procured, counseled, or advised,**
- 5. the preparation or presentation under or in connection with any matter arising under any title administered by the Colorado limited gaming control commission or a return, affidavit, claim, or other document,**
- 6. which was fraudulent or was false as to any material fact,**
- 7. whether or not such falsity or fraud was with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document.**



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[8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false presentation to commission.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false presentation to commission.

### COMMENT

1. See § 18-20-103(1)(e), C.R.S. 2019.

2. See Instruction F:195 (defining “willfully”).

3. The Committee has included the seventh element because its language appears in the statute. See § 18-20-103(1)(e). The Committee notes, however, that this “whether or not” language is arguably superfluous, as the prosecution will never need to introduce evidence to prove this element. Rather, this language presumably clarifies that a defendant may not claim that he received consent from an authorized person as an affirmative defense.

4. The statute does not define the terms “falsity,” “fraudulent,” or “material fact.”

5. By its terms, this crime applies to “any person.” § 18-20-103(1). For the purposes of this offense, subsection (2) defines “person” as including “corporate officers having control or supervision of, or responsibility for, completing tax returns or making payments pursuant to” the Limited Gaming Act of 1991. Because that definition is inclusive rather than exclusive, the Committee has not included an element requiring that the defendant is a “person.” If the parties dispute whether the defendant qualifies as a “person” for the purposes of this crime, the court may give Instruction F:268.5 (defining “person” (limited gaming offenses)).



20:05

**False Statement On Gaming License Application**

The elements of the crime of false statement on gaming license application are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,

[4. made a false statement in any application for a license issued by the Colorado limited gaming control commission or in any statement attached to the application, or provided any false or misleading information to the Colorado limited gaming control commission or the division of gaming.]

[4. failed to keep books and records to substantiate the receipts, expenses, or uses resulting from limited gaming conducted under the Limited Gaming Act of 1991, as prescribed in [insert the relevant rule promulgated by the Colorado limited gaming control commission].]

[4. falsified any books or records which related to any transaction connected with the holding, operating, and conducting of any limited card games or slot machines.]

[4. violated [insert the relevant provision of the Limited Gaming Act of 1991, the relevant rule adopted by the Colorado limited gaming control commission, or the relevant term of a license granted under the Act].]

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of false statement on gaming license application.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of false statement on gaming license application.

### COMMENT

1. *See* § 18-20-104, C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:196.9 (defining “limited card games and slot machines” and “limited gaming”).

3. For the first bracketed alternative in the fourth element, the statute does not specify that the license is one issued by the Colorado limited gaming control commission. However, the Committee has concluded from context that this language pertains to a limited gaming license under the Limited Gaming Act of 1991. *See* § 44-30-501, C.R.S. 2019. Where appropriate, the court should draft an instruction discussing the application process.

4. For the bracketed alternatives that pertain to the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on the relevant point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

5. *See* *People v. Luke*, 948 P.2d 87, 90 (Colo. App. 1997) (holding that “the trial court erred in imposing a materiality requirement” on the statute); *id.* at 91 (holding that the statute is neither constitutionally overbroad nor constitutionally vague).

6. In 2018, the Committee modified this instruction and the statutory citation in Comment 3 pursuant to a legislative amendment and reorganization. *See* Ch. 14, secs. 2, 17, §§ 44-30-501, 18-20-104, 2018 Colo. Sess. Laws 167, 184 to 86, 241.

20:06

### **Improper Use of Slot Machine (Failure to Provide Shipping Invoice)**

**The elements of the crime of improper use of slot machine (failure to provide invoice) are:**



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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was a slot machine manufacturer or distributor shipping or importing a slot machine into the state of Colorado, and
  4. provided to the Colorado limited gaming control commission at the time of shipment a shipping invoice that failed to include the destination, the serial number of each machine, or a description of each machine.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper use of slot machine (failure to provide shipping invoice).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper use of slot machine (failure to provide shipping invoice).

### COMMENT

1. See §§ 18-20-105(1), 44-30-803(1)(a)(I), C.R.S. 2019.

2. See Instruction F:345.6 (defining “slot machine”); Instruction F:345.7 (defining “slot machine distributor”); Instruction F:345.8 (defining “slot machine manufacturer”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. In 2018, the Committee modified the statutory citations in Com-



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ment 1 pursuant to a legislative amendment. *See* Ch. 14, sec. 18, § 18-20-105(1), 2018 Colo. Sess. Laws 167, 241 to 42.

20:07

### Improper Use of Slot Machine (Failure to Provide Report)

The elements of the crime of improper use of slot machine (failure to provide report) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. received a slot machine, and
  4. upon receipt of the machine,
  5. failed to provide to the Colorado limited gaming control commission upon a form available from the commission information that included the location of the machine, the machine's serial number, and the machine's description,
  6. regardless of whether the machine was received from a manufacturer or any other person.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper use of slot machine (failure to provide report).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper use of slot machine (failure to provide report).

## COLORADO JURY INSTRUCTIONS—CRIMINAL

### COMMENT

1. See §§ 18-20-105(1), 44-30-803(1)(a)(II), C.R.S. 2019.

2. See Instruction F:345.6 (defining “slot machine”); Instruction F:345.8 (defining “slot machine manufacturer”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The Committee has included the sixth element because its language appears in the statute. See § 44-30-803(1)(a)(II). The Committee notes, however, that this “regardless of whether” language is arguably superfluous, as the prosecution will never need to introduce evidence to prove this element. Rather, this language presumably clarifies that a defendant may not claim that he received the slot machine from a person other than a manufacturer as an affirmative defense.

4. In 2018, the Committee modified the statutory citations in Comments 1 and 3 pursuant to a legislative amendment. See Ch. 14, sec. 18, § 18-20-105(1), 2018 Colo. Sess. Laws 167, 241 to 42.

**20:08**

### **Improper Use of Slot Machine (Unreported Movement)**

**The elements of the crime of improper use of slot machine (unreported movement) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. moved a slot machine from the specific location for which it was licensed, and**
- 4. failed to report such movement to the Colorado limited gaming control commission in accordance with rules adopted by the commission.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

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**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper use of slot machine (unreported movement).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper use of slot machine (unreported movement).**

### COMMENT

1. *See* §§ 18-20-105(1), 44-30-803(1)(a)(III), C.R.S. 2019.

2. *See* Instruction F:345.6 (defining “slot machine”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Regarding whether a report complied with rules promulgated by the commission, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

4. In 2018, the Committee modified the statutory citations in Comment 1 pursuant to a legislative amendment. *See* Ch. 14, sec. 18, § 18-20-105(1), 2018 Colo. Sess. Laws 167, 241 to 42.

**20:09**

### Cheating

**The elements of the crime of cheating are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was an owner or employee of, or a player in, an establishment, and**
- 4. cheated at a limited gaming activity.**



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**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of cheating.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of cheating.**

### COMMENT

1. *See* § 18-20-106(1), C.R.S. 2019.

2. *See* Instruction F:48.3 (defining “cheating”); Instruction F:196.6 (defining “licensed gaming establishment”); Instruction F:196.9 (defining “limited gaming”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 20:10.SP

#### **Cheating—Special Instruction (Device)**

**Evidence that the defendant possessed more than one of [insert the relevant devices, equipment, products, or materials described in section 18-20-109, C.R.S. 2019] gives rise to a permissible inference that the defendant intended to use them for cheating.**

**A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.**

**You must bear in mind that the prosecution always has the burden of proving each element of the**

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offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

### COMMENT

1. *See* § 18-20-109(6), C.R.S. 2019.

2. Although the statute speaks in terms of a presumption, the concept should be explained as a permissible inference. *See Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

### 20:11.INT

#### Cheating—Interrogatory (Licensed)

If you find the defendant not guilty of cheating, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of cheating, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Was the defendant licensed? (Answer “Yes” or “No”)

The defendant was licensed only if:

1. the Colorado limited gaming control commission had issued him one of the following licenses: a slot machine manufacturer or distributor license, an operator license, a retail gaming license, a support license, a key employee license, or an associated equipment supplier license.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark

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**“Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. *See* § 18-20-106(3), C.R.S. 2019.

2. *See, e.g.*, Instruction E:28 (special verdict form).

3. The court should draft a supplemental instruction discussing the relevant licenses. *See* § 44-30-501(1), C.R.S. 2019.

4. In 2018, the Committee modified the statutory citation in Comment 3 pursuant to a legislative reorganization. *See* Ch. 14, sec. 2, § 44-30-501(1), 2018 Colo. Sess. Laws 167, 184 to 86.

### 20:12

#### Gaming Fraud (Alter Outcome)

**The elements of the crime of gaming fraud (alter outcome) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. altered or misrepresented the outcome of a game or other event on which wagers had been made,
4. after the outcome was made sure but before it was revealed to the players.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

**After considering all the evidence, if you decide**



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the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (alter outcome).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (alter outcome).

### COMMENT

1. See § 18-20-107(1)(a), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

## 20:13

### Gaming Fraud (Use of Knowledge)

The elements of the crime of gaming fraud (use of knowledge) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
- [3. placed, increased, or decreased a bet or determined the course of play,
4. after acquiring knowledge, not available to all players, of the outcome of the game or any event that affected the outcome of the game or which was the subject of the bet.]
- [3. aided anyone in acquiring knowledge, not available to all players, of the outcome of a game or any event that affected the outcome of the game or which was the subject of a bet,

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**4. for the purpose of placing, increasing, or decreasing a bet or determining the course of play contingent upon that event or outcome.]**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (use of knowledge).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (use of knowledge).**

**COMMENT**

1. See § 18-20-107(1)(b), C.R.S. 2019.

2. See Instruction F:31.2 (defining "bet"); Instruction F:195 (defining "knowingly").

**20:14**

**Gaming Fraud (Improper Claim)**

**The elements of the crime of gaming fraud (improper claim) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. with intent,**
- 4. to defraud,**
- [5. claimed, collected, or took, or attempted to claim, collect, or take,**

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6. money or anything of value in or from a limited gaming activity,

7. without having made a wager contingent thereon.]

[5. claimed, collected, or took,

6. an amount greater than the amount won in or from a limited gaming activity.]

[\_. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (improper claim).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (improper claim).

### COMMENT

1. See § 18-20-107(1)(c), C.R.S. 2019.

2. See Instruction F:185 (defining “with intent”); Instruction F:371 (defining “thing of value”).

3. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. See Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

4. The term “defraud” is not defined by statute.



20:15

**Gaming Fraud (Entice or Induce)**

The elements of the crime of gaming fraud (entice or induce) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. enticed or induced another,
5. to go to any place where limited gaming was being conducted or operated in violation of the Limited Gaming Act of 1991,
6. with the intent,
7. that the other person play or participate in that limited gaming activity.
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (entice or induce).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (entice or induce).

**COMMENT**

1. See § 18-20-107(1)(d), C.R.S. 2019.

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2. See Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”).

3. Regarding whether the gaming at issue violated the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. See Introductory Comment 1 to this chapter.

### 20:16

#### Gaming Fraud (Improper Bet)

The elements of the crime of gaming fraud (improper bet) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. placed or increased a bet, including a past-posting or pressing bet,
4. after acquiring knowledge of the outcome of the game or other event which was the subject of the bet.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (improper bet increase).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (improper bet).

#### COMMENT

1. See § 18-20-107(1)(e), C.R.S. 2019.

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2. See Instruction F:31.2 (defining “bet”); Instruction F:195 (defining “knowingly”).

3. The statute does not define the terms “past-posting bet” or “pressing bet.”

**20:17**

### **Gaming Fraud (Improper Bet Reduction)**

**The elements of the crime of gaming fraud (improper bet reduction) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. reduced the amount wagered or canceled a bet, including a pinching bet,**
- 4. after acquiring knowledge of the outcome of the game or other event which was the subject of the bet.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (improper bet reduction).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (improper bet reduction).**

### **COMMENT**

1. See § 18-20-107(1)(f), C.R.S. 2019.



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2. See Instruction F:31.2 (defining “bet”); Instruction F:195 (defining “knowingly”).

3. The statute does not define the term “pinching bet.”

**20:18**

### Gaming Fraud (Manipulation)

The elements of the crime of gaming fraud (manipulation) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with the intent,
4. to cheat,
5. manipulated a component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, including varying the pull of the handle of a slot machine,
6. with knowledge that the manipulation affected the outcome of the game or with knowledge of any event that affected the outcome of the game.

[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (manipulation).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you

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**should find the defendant not guilty of gaming fraud (manipulation).**

**COMMENT**

1. *See* § 18-20-107(1)(g), C.R.S. 2019.

2. *See* Instruction F:48.3 (defining “cheating”); Instruction F:160.8 (defining “gaming device”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”); Instruction F:345.6 (defining “slot machine”).

**20:19**

**Gaming Fraud (Trick)**

**The elements of the crime of gaming fraud (trick) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. by any trick or sleight of hand performance, or by fraud or fraudulent scheme, cards, or device,**
- 4. for himself [herself] or another,**
- 5. won or attempted to win money or property or a representative of either or reduced a losing wager or attempted to reduce a losing wager,**
- 6. in connection with limited gaming.**

**[7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (trick).**

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (trick).**

### COMMENT

1. *See* § 18-20-107(1)(h), C.R.S. 2019.

2. *See* Instruction F:196.9 (defining “limited gaming”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The Committee has included the fourth element because its language appears in the statute. *See* § 18-20-107(1)(h). The Committee notes, however, that this language is arguably superfluous, as the prosecution will never need to introduce evidence to prove this element. Rather, this language presumably clarifies that a defendant may not claim that he acted on behalf of another as an affirmative defense.

4. In the absence of case law on point, the Committee takes no position on whether the word “attempted” in this instruction implicates the inchoate offense of criminal attempt. *See* Instruction G2:01 (criminal attempt). Accordingly, the Committee expresses no opinion on whether the court should provide the jury with the criminal attempt elemental instruction (Instruction G2:01).

5. The statute does not define the term “sleight of hand performance.”

**20:20**

### Gaming Fraud (Lack of License)

**The elements of the crime of gaming fraud (lack of license) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. conducted a limited gaming operation without a valid license.**



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**[4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (lack of license).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (lack of license).**

### COMMENT

1. *See* § 18-20-107(1)(i), C.R.S. 2019.

2. *See* Instruction F:196.9 (defining "limited gaming"); *see also* § 18-1-503(2), C.R.S. 2019 ("Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.").

### 20:21

#### **Gaming Fraud (Unlicensed Premises)**

**The elements of the crime of gaming fraud (unlicensed premises) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. conducted a limited gaming operation on an unlicensed premises.**

**[4. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (unlicensed premises).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (unlicensed premises).

### COMMENT

1. See § 18-20-107(1)(j), C.R.S. 2019.

2. See Instruction F:196.7 (defining “licensed premises”); Instruction F:196.9 (defining “limited gaming”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

## 20:22

### Gaming Fraud (Improper Permission)

The elements of the crime of gaming fraud (improper permission) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. permitted a limited gaming game or slot machine to be conducted, operated, dealt, or carried on in any limited gaming premises,
4. by a person other than a person licensed for the premises pursuant to the Limited Gaming Act of 1991.

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**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (improper permission).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (improper permission).**

### COMMENT

1. *See* § 18-20-107(1)(k), C.R.S. 2019.

2. *See* Instruction F:196.7 (defining “licensed premises”); Instruction F:345.6 (defining “slot machine”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. In 2018, the Committee modified the fourth element pursuant to a legislative amendment. *See* Ch. 14, sec. 20, § 18-20-107(1)(k), 2018 Colo. Sess. Laws 167, 242.

### 20:23

#### Gaming Fraud (Lack of Authority)

**The elements of the crime of gaming fraud (lack of authority) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. placed a limited gaming game or slot machine into play or displayed such a game or slot machine,**



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**4. without the authorization of the Colorado limited gaming control commission.**

**[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (lack of authority).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (lack of authority).**

### COMMENT

1. *See* § 18-20-107(1)(l), C.R.S. 2019.

2. *See* Instruction F:345.6 (defining “slot machine”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

## 20:24

### Gaming Fraud (Improper Employment)

**The elements of the crime of gaming fraud (improper employment) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. employed or continued to employ in a limited gaming operation,**

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**4. any person who was not duly licensed or registered,**

**5. in a position whose duties required a license or registration pursuant to the Limited Gaming Act of 1991.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (improper employment).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (improper employment).**

**COMMENT**

1. *See* § 18-20-107(1)(m), C.R.S. 2019.

2. *See* Instruction F:196.9 (defining “limited gaming”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Regarding whether a position's duties required a license or registration pursuant to the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

**20:25**

**Gaming Fraud (Work Without License)**

**The elements of the crime of gaming fraud (work without license) are:**

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1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. without first obtaining the requisite license or registration pursuant to the Limited Gaming Act of 1991,
4. was employed, worked, or otherwise acted in a position whose duties required licensing or registration pursuant to said Act.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of gaming fraud (work without license).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of gaming fraud (work without license).

### COMMENT

1. See § 18-20-107(1)(n), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Regarding whether a position's duties required licensing or registration pursuant to the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. See Introductory Comment 1 to this chapter.



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**20:26.INT**

**Gaming Fraud—Interrogatory (Licensed)**

If you find the defendant not guilty of gaming fraud, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of gaming fraud, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

**Was the defendant licensed? (Answer “Yes” or “No”)**

**The defendant was licensed only if:**

**1. the Colorado limited gaming control commission had issued him one of the following licenses: a slot machine manufacturer or distributor license, an operator license, a retail gaming license, a support license, a key employee license, or an associated equipment supplier license.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**COMMENT**

1. See § 18-20-107(2), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).

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3. The court should draft a supplemental instruction discussing the relevant licenses. *See* 44-30-501(1), C.R.S. 2019.

4. In 2018, the Committee modified the statutory citation in Comment 3 pursuant to a legislative reorganization. *See* Ch. 14, sec. 2, § 44-30-501(1), 2018 Colo. Sess. Laws 167, 184 to 86.

**20:27**

### **Calculating Probabilities (Project Outcome)**

**The elements of the crime of calculating probabilities (project outcome) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a person at a licensed gaming establishment, and**
- 4. used, or possessed with the intent to use,**
- 5. a device to assist in projecting the outcome of a game.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of calculating probabilities (project outcome).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of calculating probabilities (project outcome).**

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### COMMENT

1. *See* § 18-20-108(1)(a), C.R.S. 2019.

2. *See* Instruction F:160.8 (defining “gaming device”); Instruction F:185 (defining “with intent”); Instruction F:196.6 (defining “licensed gaming establishment”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 20:28

#### Calculating Probabilities (Count Cards)

The elements of the crime of calculating probabilities (count cards) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a person at a licensed gaming establishment, and
4. used, or possessed with the intent to use,
5. a device to assist in keeping track of the cards played.

[6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of calculating probabilities (count cards).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you



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**should find the defendant not guilty of calculating probabilities (count cards).**

### COMMENT

1. See § 18-20-108(1)(b), C.R.S. 2019.

2. See Instruction F:160.8 (defining “gaming device”); Instruction F:185 (defining “with intent”); Instruction F:196.6 (defining “licensed gaming establishment”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**20:29**

### Calculating Probabilities (Analyze Event)

**The elements of the crime of calculating probabilities (analyze event) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a person at a licensed gaming establishment, and**
- 4. used, or possessed with the intent to use,**
- 5. a device to assist in analyzing the probability of the occurrence of an event relating to a game.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of calculating probabilities (analyze event).**

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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of calculating probabilities (analyze event).**

### COMMENT

1. See § 18-20-108(1)(c), C.R.S. 2019.

2. See Instruction F:160.8 (defining “gaming device”); Instruction F:185 (defining “with intent”); Instruction F:196.6 (defining “licensed gaming establishment”); Instruction F:281 (defining “possession”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 20:30

#### Calculating Probabilities (Analyze Strategy)

**The elements of the crime of calculating probabilities (analyze strategy) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a person at a licensed gaming establishment, and
4. used, or possessed with the intent to use,
5. a device to assist in analyzing the strategy for playing or betting to be used in a game, and
6. such action was not permitted by the Colorado limited gaming control commission.
- [7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

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After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of calculating probabilities (analyze strategy).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of calculating probabilities (analyze strategy).

### COMMENT

1. *See* § 18-20-108(1)(d), C.R.S. 2019.

2. *See* Instruction F:31.2 (defining “bet”); Instruction F:160.8 (defining “gaming device”); Instruction F:185 (defining “with intent”); Instruction F:196.6 (defining “licensed gaming establishment”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 20:31.INT

#### Calculating Probabilities—Interrogatory (Licensed)

If you find the defendant not guilty of calculating probabilities, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of calculating probabilities, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:

Was the defendant licensed? (Answer “Yes” or “No”)

The defendant was licensed only if:

1. the Colorado limited gaming control commis-



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sion had issued him one of the following licenses: a slot machine manufacturer or distributor license, an operator license, a retail gaming license, a support license, a key employee license, or an associated equipment supplier license.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 18-20-108(2), C.R.S. 2019.
2. See, e.g., Instruction E:28 (special verdict form).
3. The court should draft a supplemental instruction discussing the relevant licenses. See 44-30-501(1), C.R.S. 2019.
4. In 2018, the Committee modified the statutory citation in Comment 3 pursuant to a legislative reorganization. See Ch. 14, sec. 2, § 44-30-501(1), 2018 Colo. Sess. Laws 167, 184 to 86.

### 20:32

#### Use of Counterfeit Chips

The elements of the crime of use of counterfeit chips are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

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3. was a licensee, employee, or other person, and
4. used counterfeit chips in a limited gaming activity.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of use of counterfeit chips.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of use of counterfeit chips.

### COMMENT

1. See § 18-20-109(1), C.R.S. 2019.

2. See Instruction F:196.8 (defining “licensee”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The Committee has included the third element because its language appears in the statute. See § 18-20-109(1). The Committee notes, however, that this element is arguably superfluous, as the prosecution will never need to introduce evidence to prove it. Rather, the phrase “other person” presumably clarifies that a defendant may not argue that the statute only applies to licensees or employees.

### 20:33

## Improper Chips or Tokens

The elements of the crime of improper chips or tokens are:

1. That the defendant,

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**2. in the State of Colorado, at or about the date and place charged,**

**3. knowingly,**

**4. played or used a limited gaming activity designed to be played with, to receive, or to be operated by chips or tokens approved by the Colorado limited gaming control commission or by lawful coin of the United States of America, and**

**[5. used anything other than chips or tokens approved by the Colorado limited gaming control commission or lawful coin, legal tender of the United States of America.]**

**[5. used coin not of the same denomination as the coin intended to be used in that limited gaming activity.]**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of improper chips or tokens.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of improper chips or tokens.**

**COMMENT**

**1. See § 18-20-109(2)(a), C.R.S. 2019.**

**2. See Instruction F:195 (defining "knowingly").**



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20:34

### Use of Device

The elements of the crime of use of device are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. played or used a limited gaming activity designed to be played with, to receive, or to be operated by chips or tokens approved by the Colorado limited gaming control commission or by lawful coin of the United States of America, and
  4. used a device or a means to violate the Limited Gaming Act of 1991.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of use of device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of use of device.

### COMMENT

1. See § 18-20-109(2)(b), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 ("Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.").

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3. Regarding whether a device or a means was used to violate the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

20:35

### Possession of Improper Equipment

The elements of the crime of possession of improper equipment are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. possessed a device, equipment, or material,
4. which he [she] knew had been manufactured, distributed, sold, tampered with, or serviced in violation of the Limited Gaming Act of 1991.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of possession of improper equipment.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of possession of improper equipment.

### COMMENT

1. *See* § 18-20-109(3), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:281 (defining “possession”).

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3. Regarding whether the equipment at issue was manufactured in violation of the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

20:36

### Unauthorized Possession (Device)

The elements of the crime of unauthorized possession (device) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. had on his [her] person or in his [her] possession,
  4. a device intended to be used to violate the Limited Gaming Act of 1991, and
  5. he [she] was not a duly authorized employee of a licensee acting in furtherance of his [her] employment within an establishment.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized possession (device).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized possession (device).



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### COMMENT

1. *See* § 18-20-109(4), C.R.S. 2019.

2. *See* Instruction F:196.6 (defining “licensed gaming establishment”); Instruction F:196.8 (defining “licensee”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Regarding whether a device was intended to be used to violate the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

**20:37**

### Unauthorized Possession (Key)

**The elements of the crime of unauthorized possession (key) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. had on his [her] person or in his [her] possession while on the premises of a licensed gaming establishment,
4. a key or device known to have been designed for the purpose of and suitable for opening, entering, or affecting the operation of any limited gaming activity, drop box, or electronic or mechanical device connected thereto, or for removing money or other contents therefrom, and
5. he [she] was not a duly authorized employee of a licensee acting in furtherance of his [her] employment within an establishment.
6. and that the defendant’s conduct was not

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legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized possession (key).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized possession (key).

### COMMENT

1. See § 18-20-109(5), C.R.S. 2019.

2. See Instruction F:196.6 (defining “licensed gaming establishment”); Instruction F:196.8 (defining “licensee”); Instruction F:281 (defining “possession”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

### 20:38

#### Unauthorized Use or Possession of Cheating or Thieving Device

The elements of the crime of unauthorized use or possession of cheating or thieving device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. used or possessed while on the premises,
4. a cheating or thieving device, including tools, drills, wires, coins, or tokens attached to strings or wires or electronic or magnetic devices,

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**5. to facilitate the alignment of any winning combination or to facilitate removing from any slot machine any money or contents thereof, and**

**6. he [she] was not a duly authorized gaming employee acting in the furtherance of his [her] employment.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unauthorized use or possession of cheating or thieving device.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unauthorized use or possession of cheating or thieving device.**

**COMMENT**

1. *See* § 18-20-109(7), C.R.S. 2019.

2. *See* Instruction F:160.9 (defining “gaming employee”); Instruction F:281 (defining “possession”); Instruction F:345.6 (defining “slot machine”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute does not define the term “premises.” *Cf.* Instruction F:196.7 (defining “licensed premises”).

**20:39**

**Operation of Cheating or Thieving Game or Device**

**The elements of the crime of operation of cheating or thieving game or device are:**



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1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. was playing a licensed game in licensed gaming premises, and
5. conducted, carried on, operated, or dealt, or allowed to be conducted, carried on, operated, or dealt,
6. a cheating or thieving game or device.

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of operation of cheating or thieving game or device.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of operation of cheating or thieving game or device.

### COMMENT

1. See § 18-20-110(1)(a), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:196.7 (defining “licensed premises”).

3. The statute does not define “cheating or thieving game or device.” *But see* § 18-20-109(7), C.R.S. 2019 (providing a list of items proscribed by the crime of unauthorized use or possession of cheating or thieving device, *see* Instruction 20:38, including “tools, drills, wires, coins, or tokens attached to strings or wires or electronic or magnetic devices”).

20:40

### **Tampering With Card Game**

**The elements of the crime of tampering with card game are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. knowingly,**
- 4. was playing a licensed game in licensed gaming premises, and**
- 5. dealt, conducted, carried on, operated, or exposed for play,**
- 6. a game played with cards or a mechanical device, or any combination of games or devices,**
- 7. which had in any manner been marked or tampered with or placed in a condition or operated in a manner the result of which tended to deceive the public or tended to alter the normal random selection of characteristics or the normal chance of the game which could determine or alter the result of the game.**
- [8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with card game.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**

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**of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with card game.**

### COMMENT

1. *See* § 18-20-110(1)(b), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:196.7 (defining “licensed premises”).

3. The statute does not define the term “mechanical device.”

### 20:41

#### Prohibited Gaming Behavior (Distribution)

**The elements of the crime of prohibited gaming behavior (distribution) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. manufactured, sold, or distributed any cards, chips, dice, game, or device,**
- 4. that was intended to be used to violate any provision of the Limited Gaming Act of 1991.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited gaming behavior (distribution).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you**



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**should find the defendant not guilty of prohibited gaming behavior (distribution).**

### COMMENT

1. *See* § 18-20-111(1), C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Regarding whether the object at issue was intended to be used to violate the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

4. In 2018, the Committee modified the fourth element pursuant to a legislative amendment. *See* Ch. 14, sec. 23, § 18-20-111(1), 2018 Colo. Sess. Laws 167, 244.

**20:42**

### **Prohibited Gaming Behavior (Affect Win or Loss)**

**The elements of the crime of prohibited gaming behavior (affect win or loss) are:**

1. **That the defendant,**
2. **in the State of Colorado, at or about the date and place charged,**
3. **marked, altered, or otherwise modified related equipment or a limited gaming device,**
4. **in a manner that affected the result of a wager by determining win or loss.**

**[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**

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the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited gaming behavior (affect win or loss).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited gaming behavior (affect win or loss).

### COMMENT

1. *See* § 18-20-111(2)(a), C.R.S. 2019.

2. *See* Instruction F:160.8 (defining “gaming equipment”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

**20:43**

### Prohibited Gaming Behavior (Alter Random Selection)

The elements of the crime of prohibited gaming behavior (alter random selection) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. marked, altered, or otherwise modified related equipment or a limited gaming device,
4. in a manner that altered the normal criteria of random selection, which affected the operation of a game or which determined the outcome of a game.

[5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

## COLORADO JURY INSTRUCTIONS—CRIMINAL

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited gaming behavior (alter random selection).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited gaming behavior (alter random selection).

### COMMENT

1. See § 18-20-111(2)(b), C.R.S. 2019.

2. See Instruction F:160.8 (defining “gaming equipment”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

20:44

### Prohibited Gaming Behavior (Instruct in Cheating)

The elements of the crime of prohibited gaming behavior (instruct in cheating) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with the knowledge or intent,
4. that the information or use conveyed to another may be employed to violate the Limited Gaming Act of 1991,
5. instructed another in cheating or in the use of any device for that purpose.

[6. and that the defendant’s conduct was not



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**legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of prohibited gaming behavior (instruct in cheating).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of prohibited gaming behavior (instruct in cheating).**

### COMMENT

1. *See* § 18-20-111(3), C.R.S. 2019.

2. *See* Instruction F:48.3 (defining “cheating”); Instruction F:185 (defining “with intent”); Instruction F:195 (defining “knowingly”).

3. Regarding whether the information or use could be employed to violate the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

### 20:45.INT

#### Prohibited Gaming Behavior—Interrogatory (Licensed)

**If you find the defendant not guilty of prohibited gaming behavior, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of prohibited gaming behavior, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question on the verdict form:**

**Was the defendant licensed? (Answer “Yes” or “No”)**

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**The defendant was licensed only if:**

**1. the Colorado limited gaming control commission had issued him one of the following licenses: a slot machine manufacturer or distributor license, an operator license, a retail gaming license, a support license, a key employee license, or an associated equipment supplier license.**

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. See § 18-20-111(4), C.R.S. 2019.

2. See, e.g., Instruction E:28 (special verdict form).

3. The court should draft a supplemental instruction discussing the relevant licenses. See § 44-30-501(1), C.R.S. 2019.

4. In 2018, the Committee modified the statutory citation in Comment 3 pursuant to a legislative reorganization. See Ch. 14, sec. 2, § 44-30-501(1), 2018 Colo. Sess. Laws 167, 184 to 86.

### 20:46

#### **Unlawful Entry Into Gaming Establishment**

**The elements of the crime of unlawful entry into gaming establishment are:**

**1. That the defendant,**



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2. in the State of Colorado, at or about the date and place charged,

3. was named on the list promulgated by the Colorado limited gaming control commission of persons to be excluded or ejected from any licensed gaming establishment, and

4. entered the licensed premises of a limited gaming licensee.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful entry into gaming establishment.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful entry into gaming establishment.

### COMMENT

1. See § 18-20-112(1), C.R.S. 2019.

2. See Instruction F:196.6 (defining “licensed gaming establishment”); Instruction F:196.7 (defining “licensed premises”); Instruction F:196.8 (defining “licensee”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, the court should draft a supplemental instruction explaining the list of excluded or ejected persons. See §§ 44-30-1001(2), 1002(1), C.R.S. 2019.

4. In 2018, the Committee modified the statutory citations in Com-



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ment 3 pursuant to a legislative amendment. *See* Ch. 14, sec. 24, § 18-20-112(1), 2018 Colo. Sess. Laws 167, 244.

**20:47**

### **Unlawful Interest in Gaming Establishment**

**The elements of the crime of unlawful interest in gaming establishment are:**

- 1. That the defendant,**
  - 2. in the State of Colorado, at or about the date and place charged,**
  - 3. was named on the list promulgated by the Colorado limited gaming control commission of persons to be excluded or ejected from any licensed gaming establishment, and**
  - 4. had a personal pecuniary interest, direct or indirect, in a limited gaming licensee, licensed premises, establishment, or business involved in or with limited gaming, or in the shares in a corporation, association, or firm licensed pursuant to the Limited Gaming Act of 1991.**
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of unlawful interest in gaming establishment.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of unlawful interest in gaming establishment.**

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### COMMENT

1. *See* § 18-20-112(2), C.R.S. 2019.

2. *See* Instruction F:196.6 (defining “licensed gaming establishment”); Instruction F:196.7 (defining “licensed premises”); Instruction F:196.8 (defining “licensee”); Instruction F:196.9 (defining “limited gaming”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, the court should draft a supplemental instruction explaining the list of excluded or ejected persons. *See* §§ 44-30-1001(2), 1002(1), C.R.S. 2019.

4. Regarding whether a corporation was licensed pursuant to the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

5. The statute does not define the term “pecuniary interest.” *Cf.* Instruction F:265.5 (defining “pecuniary benefit”).

6. The Committee has included the “direct or indirect” in the fourth element because it appears in the statute. *See* § 18-20-112(2). The Committee notes, however, that this language is arguably superfluous, as the prosecution will never need to introduce evidence to prove it. Rather, this language presumably clarifies that a defendant may not claim that his pecuniary interest was indirect as an affirmative defense.

7. In 2018, the Committee modified the statutory citations in Comment 3 pursuant to a legislative amendment. *See* Ch. 14, sec. 24, § 18-20-112(1), 2018 Colo. Sess. Laws 167, 244.

**20:48**

### Acting On License for Pecuniary Gain

**The elements of the crime of acting on license for pecuniary gain are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**

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3. issued, suspended, revoked, or renewed a license pursuant to the Limited Gaming Act of 1991,

4. for any personal pecuniary gain or any thing of value.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of acting on license for pecuniary gain.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of acting on license for pecuniary gain.

### COMMENT

1. See § 18-20-113(1), C.R.S. 2019.

2. See Instruction F:371 (defining “thing of value”); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Regarding whether action was taken pursuant to the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. See Introductory Comment 1 to this chapter.

4. The statute does not define the term “personal pecuniary gain.” Cf. Instruction F:265.5 (defining “pecuniary benefit”).

**20:49**

### Conflict of Interest (License)

The elements of the crime of conflict of interest (license) are:



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1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. was a member of the Colorado limited gaming control commission; a spouse of a member; an ancestor or descendant of a member, including a natural child, child by adoption, or stepchild; a brother or sister of the whole or half blood of a member; or an uncle, aunt, nephew, or niece of the whole blood of a member, and
  4. had an interest of any kind in a license issued pursuant to the Limited Gaming Act of 1991 or owned or had any interest in property in any county where limited gaming was permitted.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of conflict of interest (license).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of conflict of interest (license).

### COMMENT

1. See §§ 18-20-113(1), 44-30-401(1)(a), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 ("Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.").

3. The statute recognizes that "the commission may, by rule,

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determine that an ownership interest of no more than five percent held by or through an institutional investor fund does not constitute an interest” in violation of this section. § 44-30-401(2). However, the Committee has not drafted a model affirmative defense instruction.

4. In 2018, the Committee modified the statutory citations in Comments 1 and 3 pursuant to a legislative amendment and reorganization. See Ch. 14, sec. 25, §§ 44-30-401, 18-20-113(1), 2018 Colo. Sess. Laws 167, 183 to 84, 244.

20:50

### **Conflict of Interest (Property)**

**The elements of the crime of conflict of interest (property) are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. was a member of the Colorado limited gaming control commission or employee of the division of gaming, including the director; or a member of the immediate family of a member or employee of the division, and
- [4. had an interest, direct or indirect, in any licensee, licensed premises, establishment, or business involved in or with limited gaming.]
- [4. owned, in whole or in part, property in the cities of Central, Black Hawk, or Cripple Creek, and
5. was not an employee of the division assigned to work regularly in Gilpin or Teller county who owned private property therein for residential purposes, with commission approval.]

[\_. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]



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**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of conflict of interest (property).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of conflict of interest (property).**

### COMMENT

1. See §§ 18-20-113(1), 44-30-401(1)(b), C.R.S. 2019.

2. See Instruction F:177.7 (defining “immediate family” (limited gaming)); Instruction F:196.6 (defining “licensed gaming establishment”); Instruction F:196.7 (defining “licensed premises”); Instruction F:196.8 (defining “licensee”); Instruction F:196.9 (defining “limited gaming”); Instruction F:392.8 (defining “within the cities of Central, Black Hawk, or Cripple Creek”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute provides that certain division employees “may live with their families” in Gilpin County or Teller County. § 44-30-401(1)(b). Because the criminalizing portion of the statute is unconcerned with where an employee lives, and because this language could confuse the jury, the Committee has omitted this language from the fifth bracketed element.

4. The statute recognizes that “the commission may, by rule, determine that an ownership interest of no more than five percent held by or through an institutional investor fund does not constitute an interest” in violation of this section. § 44-30-401(2). However, the Committee has not drafted a model affirmative defense instruction.

5. The Committee has included the “direct or indirect” in the fourth element because it appears in the statute. See § 44-30-401(1)(b). The Committee notes, however, that this language is arguably superfluous, as the prosecution will never need to introduce evidence to prove it. Rather, this language presumably clarifies that a defendant may not claim that his interest was indirect as an affirmative defense.

6. In 2018, the Committee modified the statutory citations in the



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Comments pursuant to a legislative amendment and reorganization. See Ch. 14, sec. 25, §§ 44-30-401, 18-20-113(1), 2018 Colo. Sess. Laws 167, 183 to 84, 244.

20:51

### **Conflict of Interest (Gift)**

**The elements of the crime of conflict of interest (gift) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was a member of the Colorado limited gaming control commission or employee of the division of gaming, including the director; or a member of the immediate family of a member of the commission or employee of the division, and**
- 4. received a gift, gratuity, employment, or other thing of value,**
- 5. from any person, corporation, association, or firm that contracted with or that offered services, supplies, materials, or equipment used by the division in the normal course of its operations, or that was licensed by the division or the commission, and**
- 6. the defendant's acceptance was not on an infrequent basis in the normal course of business of nonpecuniary items of insignificant value that were allowed by the director and that were specified by the commission by rule and regulation.**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**

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the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of conflict of interest (gift).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of conflict of interest (gift).

### COMMENT

1. See §§ 18-20-113(1), 44-30-401(1)(c), C.R.S. 2019.

2. See Instruction F:177.7 (defining “immediate family” (limited gaming)); Instruction F:371 (defining “thing of value”); *see also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, the court should draft a supplemental instruction detailing nonpecuniary items of insignificant value that were permitted by the director and commission.

4. The statute provides that this offense “shall not apply to an employee of the division acting in his or her official capacity while on duty.” § 44-30-401(3). However, the Committee has not drafted a model affirmative defense instruction.

5. In 2018, the Committee modified the fifth element, the statutory citations in Comments 1 and 4, and the quoted language in Comment 4 pursuant to a legislative amendment and reorganization. *See* Ch. 14, sec. 25, §§ 44-30-401, 18-20-113(1), 2018 Colo. Sess. Laws 167, 183 to 84, 244.

20:52

### Conflict of Interest (Participation)

The elements of the crime of conflict of interest (participation) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,

## COLORADO JURY INSTRUCTIONS—CRIMINAL

3. was a member of the Colorado limited gaming control commission or employee of the division of gaming, including the director; or a member of the immediate family of a member of the commission or employee of the division, and

4. participated in limited gaming + or sports betting.

[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of conflict of interest (participation).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of conflict of interest (participation).

### COMMENT

1. See §§ 18-20-113(1), 44-30-401(1)(d), C.R.S. 2019.

2. See Instruction F:177.7 (defining “immediate family” (limited gaming)); see also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. The statute provides that this offense “shall not apply to an employee of the division acting in his or her official capacity while on duty.” § 44-30-401(3). However, the Committee has not drafted a model affirmative defense instruction.

4. + If necessary, the court should give a supplemental instruction explaining the sports betting at issue. See §§ 44-30-1501 to -1515, C.R.S. 2019.

5. In 2018, the Committee modified the statutory citations in Com-



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ments 1 and 3, as well as the quoted language in Comment 3, pursuant to a legislative amendment and reorganization. *See* Ch. 14, sec. 25, §§ 44-30-401, 18-20-113(1), 2018 Colo. Sess. Laws 167, 183 to 84, 244.

6. + In 2019, the Committee added the phrase “or sports betting” to the fourth element pursuant to a legislative amendment; the Committee also added Comment 4. *See* Ch. 347, sec. 9, § 44-30-401(1)(d), 2019 Colo. Sess. Laws 3209, 3215.

20:53

### Conflict of Interest (Conviction)

The elements of the crime of conflict of interest (conviction) are:

1. That the defendant,
  2. in the State of Colorado, at or about the date and place charged,
  3. served as a member of the Colorado limited gaming control commission or employee of the division of gaming, including the director,
  4. after having been convicted of a felony or any gambling-related offense.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of conflict of interest (conviction).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of conflict of interest (conviction).

## COLORADO JURY INSTRUCTIONS—CRIMINAL

### COMMENT

1. See §§ 18-20-113(1), 44-30-401(1)(e), C.R.S. 2019.

2. See also § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. If necessary, the court should draft a supplemental instruction discussing the felony or gambling-related offense at issue.

4. In 2018, the Committee modified the statutory citations in Comment 1 pursuant to a legislative amendment and reorganization. See Ch. 14, sec. 25, §§ 44-30-401, 18-20-113(1), 2018 Colo. Sess. Laws 167, 183 to 84, 244.

**20:54**

### Providing False or Misleading Information

**The elements of the crime of providing false or misleading information are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. provided false or misleading information under the Limited Gaming Act of 1991.**

**[4. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of providing false or misleading information.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more**

## **RECRUITMENT OF JUVENILES FOR A CRIMINAL STREET GANG**

**of the elements beyond a reasonable doubt, you should find the defendant not guilty of providing false or misleading information.**

### **COMMENT**

1. *See* § 18-20-114, C.R.S. 2019.

2. *See also* § 18-1-503(2), C.R.S. 2019 (“Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state.”).

3. Regarding whether the information at issue was provided under the Limited Gaming Act of 1991, the court should draft a special instruction that explains the law on this point, allowing the jury to apply this law to the facts of the case. *See* Introductory Comment 1 to this chapter.

## **CHAPTER 23**

### **RECRUITMENT OF JUVENILES FOR A CRIMINAL STREET GANG**

#### **CHAPTER COMMENTS**

1. The Committee added this chapter in 2016.

**23:01**

#### **Recruitment of a Juvenile for a Criminal Street Gang (Participation or Membership)**

**The elements of the crime of recruitment of a juvenile for a criminal street gang (participation or membership) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was eighteen years of age or older, and**
- 4. knowingly,**



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**5. solicited, invited, recruited, encouraged, coerced, or otherwise caused a person younger than eighteen years of age to actively participate in or become a member of a criminal street gang.**

**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of recruitment of a juvenile for a criminal street gang (participation or membership).**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of recruitment of a juvenile for a criminal street gang (participation or membership).**

**COMMENT**

1. See § 18-23-102(1)(a), C.R.S. 2019.

2. See Instruction F:79.5 (defining "criminal street gang"); Instruction F:195 (defining "knowingly").

**23:02**

**Recruitment of a Juvenile for a Criminal Street Gang  
(Prevent From Leaving)**

**The elements of the crime of recruitment of a juvenile for a criminal street gang (prevent from leaving) are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. was eighteen years of age or older, and**

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4. knowingly,
  5. by use of force, threat, or intimidation directed at any person, or by the infliction of bodily injury upon any person,
  6. prevented a person younger than eighteen years of age from leaving a criminal street gang.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of recruitment of a juvenile for a criminal street gang (prevent from leaving).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of recruitment of a juvenile for a criminal street gang (prevent from leaving).

### COMMENT

1. See § 18-23-102(1)(b), C.R.S. 2019.

2. See Instruction F:37 (defining "bodily injury"); Instruction F:79.5 (defining "criminal street gang"); Instruction F:195 (defining "knowingly").

## CHAPTER 42

## VEHICLE AND TRAFFIC OFFENSES

### CHAPTER COMMENTS

1. The Committee has drafted model instructions for selected motor vehicle and traffic offenses that are regularly tried to juries (either independently, or in conjunction with more serious charges that are defined in the criminal code, such as vehicular homicide and vehicular eluding).

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Because Title 42 defines hundreds of other offenses for which the Committee has not prepared model instructions, the Committee recommends using the model instructions in this chapter as templates when drafting instructions for other vehicle or traffic offenses.

2. Determining what culpable mental state, if any, applies to a traffic offense that does not expressly designate a culpable mental state element can be complicated. *See* *People v. Manzo*, 144 P.3d 551, 559 (Colo. 2006) (“Leaving the Scene of an Accident with Serious Injury [in violation of section 42-4-1601] is a strict liability offense because the plain language of the statute does not require or imply a culpable mental state.”); *People v. Caddy*, 540 P.2d 1089, 1091 (Colo. 1975) (“speeding is an offense of strict liability”). Accordingly, unlike the chapters of elemental instructions that define offenses from Title 18, *see* Chapter A, “Culpable Mental States,” this chapter does not raise the question of whether it may be appropriate to impute a culpable mental state of “knowingly” to an offense that does not expressly designate a culpable mental state. Even when a traffic offense expressly designates a culpable mental state, instructing the jury on that element may require caution. *See, e.g.,* *People v. Zwegardt*, 2012 COA 119, ¶ 34, 298 P.3d 1018, 1025 (“Criminal negligence requires a gross deviation from the standard of care. § 18-1-501(3). Careless driving requires that the defendant drive without due regard. A person who grossly deviates from the standard of care that a reasonable person would exercise and fails to perceive a substantial and unjustified risk that a result will occur or that a circumstance exists, has necessarily acted without due regard for safety.”); *People v. Pena*, 962 P.2d 285, 289 (Colo. App. 1997) (the type of recklessness in 42-4-1401(1) is indistinguishable from the definition of “recklessly” in section 18-1-501(8), C.R.S. 2019).

42:01

### Driving Without a Valid License

**The elements of the crime of driving without a valid license are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. drove a motor vehicle,
4. upon a highway in this state, and
5. had not been issued a currently valid driver's license, minor driver's license, or an instruction permit by the Department of Revenue.



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**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of driving without a valid license.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of driving without a valid license.**

### COMMENT

1. See § 42-2-101(1), C.R.S. 2019.

2. See Instruction F:171 (defining "highway"); Instruction F:239 (defining "motor vehicle").

3. See Instruction H:73 (affirmative defense of "emergency or exemption").

4. The introductory clause of section 42-2-101(1) provides as follows: "Except as otherwise provided in part 4 of this article for commercial drivers." Accordingly, in a case where the validity of the defendant's license or conduct as a commercial driver is at issue, refer to Part 4 of Article 2.

5. Subsections two through five of section 42-2-101 define other ways of committing this offense. However, as in COLJI-Crim. (2008), the Committee has not drafted model instructions for these variants.

## 42:02

### Driving Under Restraint (General)

**The elements of the crime of driving under restraint are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**

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3. drove a motor vehicle or off-highway vehicle,
4. upon any highway of this state,
5. with knowledge that his [her] license or privilege to drive, either as a resident or a nonresident, was under restraint for any reason.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of driving under restraint.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of driving under restraint.

COMMENT

1. See § 42-2-138(1)(a), C.R.S. 2019.

2. See Instruction F:171 (defining “highway”); Instruction F:196 (defining “knowledge”); Instruction F:239 (defining “motor vehicle”); Instruction F:249.5 (defining “off-highway vehicle”); Instruction F:320 (defining “restraint” and “restrained”).

3. See § 42-2-138(1.5) (providing that driving under restraint is a class A traffic infraction rather than a misdemeanor if the restraint is “for an outstanding judgment”).

4. + See *People v. Wambolt*, 2018 COA 88, ¶¶ 49, 63, 431 P.3d 681, 692, 694 (holding that driving under restraint is a lesser included offense of driving after revocation prohibited).

5. In 2017, the Committee added Comment 3 pursuant to new legislation. See Ch. 208, sec. 1, § 42-2-138(1.5), 2017 Colo. Sess. Laws 810, 810.

6. + In 2019, the Committee added Comment 4.

## VEHICLE AND TRAFFIC OFFENSES

42:03

### Driving Under Restraint (Restraint Based On a Conviction or Administrative Action Related to Alcohol or Drugs)

The elements of the crime of driving under restraint (restraint based on a conviction or administrative action related to alcohol or drugs) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. drove a motor vehicle or off-highway vehicle,
4. upon any highway of this state,
5. with knowledge that his [her] license or privilege to drive, either as a resident or a nonresident, was under restraint,

[6. because of [insert description of restraint(s) from section 42-2-126(3)].]

[6. solely or partially because of a conviction of driving under the influence, driving with excessive alcohol content, driving while ability impaired, or underage drinking and driving.]

[6. in another state, solely or partially because of an alcohol-related driving offense.]

[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of driving under restraint (restraint based on a conviction or administrative action related to alcohol or drugs).



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**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of driving under restraint (restraint based on a conviction or administrative action related to alcohol or drugs).**

### COMMENT

1. *See* § 42-2-138(1)(d)(I), C.R.S. 2019.

2. *See* Instruction F:171 (defining “highway”); Instruction F:196 (defining “knowledge”); Instruction F:239 (defining “motor vehicle”); Instruction F:249.5 (defining “off-highway vehicle”); Instruction F:320 (defining “restraint” and “restrained”); *see also* § 42-1-102(109.7), C.R.S. 2019 (“‘UDD’ means underage drinking and driving, and use of the term shall incorporate by reference the offense described in section 42-4-1301(2)(a.5).”).

3. *See* Instruction H:75 (affirmative defense of “valid license issued subsequent to restraint”).

4. *See* *Griego v. People*, 19 P.3d 1, 5 (Colo. 2001) (“After our decision in [*Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987)] held the culpable mental state of ‘knowingly’ applicable to the misdemeanor driving under restraint statute, the legislature amended that statute to require a degree of mental culpability less than ‘knowingly.’”).

### 42:04.SP

#### **Driving Under Restraint—Special Instruction (Notice)**

**The following circumstances give rise to a permissible inference that the defendant received personal notice that his [her] license or privilege to drive was under restraint:**

- 1. certification that a notice was mailed, post-paid, by first-class mail to the last-known address of the defendant shown by the records of the Department of Revenue; or**
- 2. delivery of such notice to the last-known address of the defendant shown by the records of the Department of Revenue; or**
- 3. personal service of such notice upon the**

defendant, or upon any attorney appearing on the defendant's behalf; or

4. certification that notice was given in another state in compliance with such state's law.

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

#### COMMENT

1. See §§ 42-2-119(2), 42-2-138(2)(a), C.R.S. 2019.

2. Unlike COLJI-Crim. 42:02 (2008) ("proof of knowledge"), the above model instruction does not authorize the jury to draw a permissible inference that the defendant had *knowledge* of the revocation. Rather, the instruction now describes how proof of a specified circumstance can give rise to a permissible inference that the defendant had *notice* of the restraint.

It appears that COLJI-Crim. 42:02 (2008) was based on *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987), in which the supreme court relied on the relevant provision for establishing the fact of revocation (then-codified as section 42-2-130(2)) as a basis for holding that: (1) knowledge of the fact of a license revocation was an essential element of the crime of driving while license revoked (then-codified as section 42-2-130(1)); and (2) the giving of notice by registered mail in accordance with section 42-2-130(2) gave rise to a permissible inference that the defendant had knowledge of the revocation. However, *Jolly* was decided under the pre-1994 driving under restraint statute, section 42-2-130(1), which, unlike the current section 42-2-138(1)(a), (d)(I), did not explicitly include knowledge of the restraint as an element of the offense. See *Jolly*, 742 P.2d at 894 (quoting 42-2-130(1)(a)); see also Ch. 337, sec. 1, § 42-2-138(1)(a), (d)(I), 1994 Colo. Sess. Laws 2155 (enacting section 42-2-138 to replace section 42-2-130, as part of a complete recodification of Title 42). Accordingly, the Committee has revised the model instruction so that it is in accord with the definition of "knowledge" in section 42-2-138(4)(a), C.R.S. 2019 ("Knowledge" means actual knowledge of any restraint from whatever source or knowledge of circumstances sufficient



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to cause a reasonable person to be aware that such person's license or privilege to drive was under restraint. 'Knowledge' does not mean knowledge of a particular restraint or knowledge of the duration of restraint."), and the supreme court's explanation of that definition:

The second part of this definition involves in part the use of an objective reasonable person standard. However, this definition requires that the particular defendant possess knowledge of those circumstances that would trigger a reasonable person to believe his license was under restraint. Under this definition, a defendant could not be punished for acting without actual subjective knowledge of these circumstances. Thus, knowledge, as defined, combines both a subjective and an objective component. It requires the defendant to be actually aware of specific circumstances. These specific circumstances are defined by using an objective reasonable person standard. For example, if, after being convicted of numerous traffic offenses, a defendant sees mail from the Division of Motor Vehicles (DMV) and then refuses to open the letter, he might be found to have been aware of circumstances that would lead a reasonable person to believe his license to drive was under restraint and his claim that he drove without knowledge of the restraint might fail. In contrast, if we were to accept as true that a defendant unwittingly threw out the DMV letter with his junk mail and that he never saw the DMV letter addressed to him, then he might be found not to have possessed the subjective knowledge of the circumstances that would lead a reasonable person to believe his license was under restraint.<sup>FN5</sup> This defendant, although perhaps negligent in sorting his mail, might not have driven with the required "knowledge" of the restraint.

FN5. This example assumes that the hypothetical defendant did not act deliberately to disregard the DMV letter and, further, that awareness of having been convicted of numerous traffic offenses would not alone lead a reasonable person to believe his license was under restraint.

People v. Ellison, 14 P.3d 1034, 1037, n.5 (Colo. 2000); *see also* Griego v. People, 19 P.3d 1, 5 (Colo. 2001) ("After our decision in [Jolly v. People, 742 P.2d 891, 897 (Colo. 1987)] held the culpable mental state of 'knowingly' applicable to the misdemeanor driving under restraint statute, the legislature amended that statute to require a degree of mental culpability less than 'knowingly.'").

In summary, under the current statutory scheme: (1) it is permissible for the jury to draw an inference that the defendant had *notice* of a restraint based on evidence satisfying section 42-2-119(2) or section 42-2-138(2)(a); and (2) an inference that the defendant had such notice may, depending on the surrounding circumstances, support a finding that the defendant also had *knowledge*, within the meaning of section 42-2-138(4)(a).



**Driving After Revocation Prohibited**

The elements of the crime of driving after revocation prohibited are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. having had his [her] license to drive revoked by the Department of Revenue based on a finding that he [she] was an habitual offender,
5. operated a motor vehicle in this state,
6. while the revocation prohibiting such operation was in effect.
- [7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of driving after revocation prohibited.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of driving after revocation prohibited.

**COMMENT**

1. See § 42-2-206(1)(a)(I), C.R.S. 2019.

2. See Instruction F:195 (defining “knowingly”); Instruction F:239 (defining “motor vehicle”).

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3. See *Griego v. People*, 19 P.3d 1, 5 (Colo. 2001) (“When the General Assembly amended the culpable mental state requirement for driving under restraint but did not amend the culpable mental state for driving after revocation prohibited, we must presume that it did so with awareness of our decisions in [*People v. Lesh*, 668 P.2d 1362, 1365 (Colo. 1983), *Ault v. Department of Revenue*, 697 P.2d 24, 27 (Colo. 1985), and *Jolly v. People*, 742 P.2d 891, 896 (Colo. 1987)], and therefore chose to retain ‘knowingly’ as the culpable mental state for driving after revocation prohibited.”).

4. The term “operate” is not defined in section 42-2-206. See *People v. Stewart*, 55 P.3d 107, 115 (Colo. 2002) (“The term ‘operate’ is somewhat broader [than the term ‘drive’], connoting the action of causing something ‘to occur . . . [or] to cause to function usually by direct personal effort.’ *People v. Gregor*, 26 P.3d 530, 532 (Colo. App. 2000) (quoting *Webster’s Third New International Dictionary* 1580–81 (1986)).”); *People v. Gregor*, 26 P.3d 530, 532 (Colo. App. 2000) (“the trial court did not err in failing to define ‘operate’ as requiring actual movement of the vehicle”).

In *People v. VanMatre*, 190 P.3d 770, 772 (Colo. App. 2008), a division of the Court of Appeals analyzed an instruction that defined the term “operate,” for purposes of the offense of aggravated driving with a revoked license in violation of section 42-2-206(1)(b), as “exercising actual physical control of a vehicle, which was to be determined by considering the totality of the circumstances.”

The instruction further provided a nonexclusive list of factors for the jury to consider in determining the issue of actual physical control. The factors included the vehicle’s operability, the vehicle’s location, defendant’s location in the vehicle, the location of the ignition keys, whether the motor was running, whether defendant had the apparent ability to start the vehicle, whether defendant was conscious, whether the heater or air conditioner was running, whether the windows were up or down, and any other factor which tended to indicate that defendant exercised bodily influence or direction over the vehicle based on the jury’s everyday experience.

*Id.* Although the division held that this instruction was adequate based on the facts of the case, it endorsed the “reasonably capable of being rendered operable” standard:

[W]hen considering whether a defendant exercised actual physical control over a vehicle or caused it to function, that is, drove or operated a vehicle, a jury may consider the totality of the circumstances, including the factors listed in the jury instruction here. Furthermore, when there is evidence indicating that the vehicle may not have been reasonably capable of being rendered operable, the jury must be instructed that it must find the vehicle was either operable, reasonably capable of be-



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ing rendered operable, in motion (whether by coasting or pushing), or at risk of being put in motion before finding the defendant guilty of driving or operating a vehicle under the DUI and [driving after revocation prohibited] statutes.

*Id.* at 773; *see also* *People v. Valdez*, 2014 COA 125, ¶ 23, 411 P.3d 94, 100 (“[T]he instruction set forth in *VanMatre* involves an element-negating traverse because, if a defendant establishes that a ‘vehicle may not have been reasonably capable of being operable,’ such evidence would necessarily negate the required elements of ‘driving’ and ‘operating’ a vehicle.”).

5. + *See People v. Wambolt*, 2018 COA 88, ¶¶ 49, 63, 431 P.3d 681, 692, 694 (holding that driving under restraint is a lesser included offense of driving after revocation prohibited).

6. In 2017, the Committee added the citation to *People v. Valdez* in Comment 4.

7. + In 2019, the Committee added Comment 5.

42:06

### Aggravated Driving After Revocation Prohibited

**The elements of the crime of driving after revocation prohibited are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. having had his [her] license to drive revoked by the Department of Revenue based on a finding that he [she] was an habitual offender,
5. operated a motor vehicle in this state,
6. while the revocation prohibiting such operation was in effect, and
7. as a part of the same criminal episode, committed [any of] the following crime[s]: [insert the



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**name(s) of the relevant offense(s) enumerated in section 42-2-206(b)(I)(C)–(F)].**

**[8. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of driving after revocation prohibited.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of driving after revocation prohibited.**

### COMMENT

1. *See* § 42-2-206(1)(b)(I), C.R.S. 2019.

2. *See* Instruction F:195 (defining “knowingly”); Instruction F:239 (defining “motor vehicle”).

3. If the defendant is not separately charged with a referenced offense, give the jury the elemental instruction for the offense without the two concluding paragraphs that explain the burden of proof. Place the elemental instruction for the referenced offense immediately after the above instruction (or as close to it as practicable). In addition, provide the jury with instructions defining the relevant terms and theories of criminal liability for the referenced offense.

4. Aggravated driving with a revoked license is not a sentence enhancement provision for the offense of driving after revocation prohibited; it is a separate crime. *See* Griego v. People, 19 P.3d 1, 6, n.6 (Colo. 2001) (“The 1999 amendment . . . created the new offense of aggravated driving with a revoked license . . .”); *People v. Wilson*, 114 P.3d 19, 26 (Colo. App. 2004) ([Section] 42-2-206(1)(b) clearly sets forth the elements of the crime of aggravated driving with a revoked license, which include six different offenses committed ‘as part of the same criminal episode.’ Thus, the aggravating offenses listed in § 42-2-206(1)(b) are essential elements of the crime.”).

5. *See* Instruction 42:05 (driving after revocation prohibited), Comment 3 (discussing the imputed mens rea of “knowingly”), and Comment 4 (discussing cases defining the term “operate”).

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6. In 2015, the Committee modified the bracketed statutory citation in the seventh element. *See* Ch. 262, sec. 4, § 42-2-206, 2015 Colo. Sess. Laws 990, 996.

7. In 2017, the Committee corrected the statutory citation in Comment 1.

**42:07**

### Speeding

**The elements of the crime of speeding are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. drove a motor vehicle,**
- 4. on a highway,**
- 5. at a speed greater than was reasonable and prudent under the conditions then existing.**
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of speeding.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of speeding.**

### COMMENT

1. *See* § 42-4-1101(1), C.R.S. 2019.

2. *See* Instruction F:171 (defining “highway”); Instruction F:239 (defining “motor vehicle”).

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3. See *People v. Caddy*, 540 P.2d 1089, 1091 (Colo. 1975) (“speeding is an offense of strict liability”); Instruction G1:02 (strict liability crimes).

4. See Instruction H:74 (affirmative defense of “emergency”).

### 42:08.SP

#### **Speeding—Special Instruction (Speed in Excess of Designated Speed Limit)**

**Evidence that the defendant was driving at any speed in excess of [insert the lawful designated speed pursuant to section 42-4-1101(2)] gives rise to a presumption that such speed was not reasonable or prudent under the conditions then existing.**

**A presumption requires you to find a fact as if it had been established by evidence, unless the presumption is rebutted by evidence to the contrary.**

**You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt.**

#### COMMENT

1. See § 42-4-1101(4), C.R.S. 2019.

2. Unlike most criminal statutes, section 42-4-1101(4) creates a mandatory rebuttable presumption rather than a permissible inference. See *People v. Hoskin*, 2016 CO 63, ¶¶ 11, 17, 380 P.3d 130, 134, 136 (“[T]he plain language of the speeding statute creates a mandatory rebuttable presumption . . . [C]ivil traffic infraction defendants are not entitled to the same due process protections afforded to defendants in criminal proceedings. Rather, due process rights afforded to defendants in criminal proceedings, specifically, as they relate to the burden of proof, are not implicated here.”).

3. In 2016, the Committee modified this instruction and Comment 2 in light of *People v. Hoskin*, *supra*.

### 42:09

#### **Driving Under the Influence**

**The elements of the crime of driving under the influence are:**



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1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. drove a motor vehicle or vehicle,
4. while under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs.
- [5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of driving under the influence.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of driving under the influence.

### COMMENT

1. See § 42-4-1301(1)(a), C.R.S. 2019.

2. See Instruction F:110 (defining “driving under the influence”); Instruction F:239 (defining “motor vehicle”); Instruction F:252 (defining “one or more drugs”); Instruction F:386 (defining “vehicle”).

3. In *People v. Swain*, 959 P.2d 426, 431 (Colo. 1998), the supreme court held that, for purposes of section 42-4-1301, the term “drive” means “actual physical control of a vehicle.” In so holding, the court extended the definition it had developed in the license revocation context, see *Brewer v. Motor Vehicle Division*, Department of Revenue, 720 P.2d 564 (Colo. 1986), without endorsing the trial court’s instruction that enumerated five factors for the jury to “consider in deciding whether or not a person was in actual physical control of a motor vehicle.” *People v. Swain*, 959 P.2d at 428; see also *People v. VanMatre*, 190 P.3d 770, 773 (Colo. App. 2008) (“a vehicle must be reasonably capable of being rendered operable before a person can be convicted of ‘driving’ . . . the vehicle while intoxicated”); *People v. Valdez*, 2014

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COA 125, ¶ 23, 411 P.3d 94, 100 (“[T]he instruction set forth in *VanMatre* involves an element-negating traverse because, if a defendant establishes that a ‘vehicle may not have been reasonably capable of being operable,’ such evidence would necessarily negate the required elements of ‘driving’ and ‘operating’ a vehicle.”).

4. See *Reyna-Abarca v. People*, 2017 CO 15, ¶ 69, 390 P.3d 816, 827 (concluding that DUI is a lesser-included offense of vehicular assault-DUI and vehicular homicide-DUI).

5. In 2015, the General Assembly created felony penalties for repeat DUI offenders. See Ch. 262, sec. 1, § 42-4-1301(1)(a), 2015 Colo. Sess. Laws 990, 990. Because such a determination does not require jury fact-finding, see *Misenhelter v. People*, 234 P.3d 657, 660 (Colo. 2010) (noting that the U.S. Supreme Court “has now firmly established that the fact of a prior conviction is specifically exempted and need not be proven to a jury beyond a reasonable doubt”), the Committee has not created a separate interrogatory. + See *People v. Gwinn*, 2018 COA 130, ¶ 39, 428 P.3d 727, 736 (“[S]imilar to habitual criminal findings, prior DUI convictions constitute sentence enhancers that do not require a jury finding, rather than elements of the crime that do.”).

6. In 2017, the Committee added the citation to *People v. Valdez* in Comment 3, and it also added Comment 4.

7. In 2018, the Committee added Comment 5 and renumbered the subsequent comment.

8. + In 2019, the Committee added the citation to *Gwinn* in Comment 5.

42:10

### Driving While Ability Impaired

The elements of the crime driving while ability impaired are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. drove a motor vehicle or vehicle,
4. while impaired by alcohol or by one or more drugs, or by a combination of alcohol and one or more drugs.

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[5. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of driving while ability impaired.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of driving while ability impaired.

### COMMENT

1. See § 42-4-1301(1)(b), C.R.S. 2019.

2. See Instruction F:111 (defining "driving while ability impaired"); Instruction F:239 (defining "motor vehicle"); Instruction F:252 (defining "one or more drugs"); Instruction F:386 (defining "vehicle").

3. See Instruction 42:09, Comment 3 (discussing the meaning of the term "drive").

### 42:11.SP

#### Driving Under the Influence or While Ability Impaired— Special Instruction (Blood or Breath Alcohol Level)

As to the charge of [driving under the influence] [driving while ability impaired], the amount of alcohol in the defendant's blood or breath at the time of the alleged offense, or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, gives rise to the following:

##### (a) Presumption:

It shall be presumed that the defendant was not under the influence of alcohol if there was at such time 0.05 or less grams of alcohol per one hundred milliliters of blood, or if there was at such time



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**0.05 or less grams of alcohol per two hundred ten liters of breath.**

**A presumption requires you to find a fact, as if it had been established by evidence, unless the presumption is rebutted by evidence to the contrary.**

**(b) Permissible inferences:**

**A permissible inference that the defendant's ability to operate a motor vehicle or vehicle was impaired by the consumption of alcohol may be drawn if there was at such time in excess of 0.05 but less than 0.08 grams of alcohol per one hundred milliliters of blood, or if there was at such time in excess of 0.05 but less than 0.08 grams of alcohol per two hundred ten liters of breath, and such fact may also be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.**

**A permissible inference that the defendant was under the influence of alcohol may be drawn if there was at such time 0.08 or more grams of alcohol per one hundred milliliters of blood, or if there was at such time 0.08 or more grams of alcohol per two hundred ten liters of breath.**

**A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.**

**You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.**

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### COMMENT

1. See § 42-4-1301(6)(a)(I) to (III), C.R.S. 2019.

2. The similar provisions relating to vehicular homicide and vehicular assault do not establish a permissible inference for a B.A.C. in excess of .05, but less than .08. This is because those offenses require proof that the defendant was “under the influence,” and not merely “impaired.” See § 18-3-106(2)(b), C.R.S. 2019 (stating that the B.A.C. “may be considered with other competent evidence”); § 18-3-205(2)(b), C.R.S. 2019 (same). Accordingly, where a charge of DUI is submitted as a lesser-included offense of one of these felonies, it may be necessary to use separate special instructions to guide the jury’s consideration of the B.A.C. evidence.

### 42:12.SP

#### **Driving Under the Influence or While Ability Impaired— Special Instruction (Delta 9-Tetrahydrocannabinol Level)**

As to the charge of [driving under the influence] [driving while ability impaired], a permissible inference that the defendant was under the influence of one or more drugs may be drawn if the amount of delta 9-tetrahydrocannabinol in the defendant’s blood at the time of the alleged offense, or within a reasonable time thereafter, as shown by analysis of the defendant’s blood, was five nanograms or more per milliliter in whole blood.

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

### COMMENT

1. See § 42-4-1301(6)(a)(IV), C.R.S. 2019.



42:13

**Driving With Excessive Alcohol Content**

The elements of the crime of driving with excessive alcohol content are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. drove a motor vehicle or vehicle, and
4. at the time of driving, or within two hours after driving,
5. he [she] had a blood alcohol content of 0.08 or more grams of alcohol per one hundred milliliters of blood, or a breath alcohol content of 0.08 or more grams of alcohol per two hundred ten liters of breath.

[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of driving with excessive alcohol content.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of driving with excessive alcohol content.

**COMMENT**

1. See § 42-4-1301(2)(a), C.R.S. 2019.
2. See Instruction F:239 (defining “motor vehicle”); Instruction F:386



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(defining “vehicle”); *see also* Instruction 42:09, Comment 3 (discussing the meaning of the term “drive”).

3. *See* Instruction H:76 (affirmative defense of “subsequent consumption of alcohol”).

### 42:14

#### Reckless Driving

**The elements of the crime of reckless driving are:**

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. drove a [motor vehicle] [bicycle] [electrical assisted bicycle] + [electric scooter] [low-power scooter],
4. in such a manner as to indicate either a wanton or a willful disregard for the safety of persons or property.
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of reckless driving.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of reckless driving.

#### COMMENT

1. *See* § 42-4-1401(1), C.R.S. 2019.
2. *See* Instruction F:32 (defining “bicycle”); + Instruction F:114.9

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(defining “electric scooter”); Instruction F:115 (defining “electrical assisted bicycle”); Instruction F:202 (defining “low-power scooter”); Instruction F:239 (defining “motor vehicle”).

3. *See* *People v. Pena*, 962 P.2d 285, 289 (Colo. App. 1997) (the type of recklessness in 42-4-1401(1) is indistinguishable from the definition of “recklessly” in section 18-1-501(8), C.R.S. 2019).

4. + *See* *People v. Dominguez*, 2019 COA 78, ¶ 64, 454 P.3d 364, 374 (holding that reckless driving is a lesser included offense of vehicular eluding).

5. + In 2019, pursuant to new legislation, the Committee added “electric scooter” to the third element and added the cross-reference to Instruction F:114.9 in Comment 2. *See* Ch. 271, sec. 11, § 42-4-1401(1), 2019 Colo. Sess. Laws 2557, 2561. The Committee also added Comment 4.

### 42:15

#### Careless Driving

**The elements of the crime of careless driving are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. drove a [motor vehicle] [bicycle] [electrical assisted bicycle] + [electric scooter] [low-power scooter],**
- 4. in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances.**
- [5. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of careless driving.

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of careless driving.**

**COMMENT**

1. *See* § 42-4-1402(1), C.R.S. 2019.

2. *See* Instruction F:32 (defining “bicycle”); + Instruction F:114.9 (defining “electric scooter”); Instruction F:115 (defining “electrical assisted bicycle”); Instruction F:202 (defining “low-power scooter”); Instruction F:239 (defining “motor vehicle”).

3. *See* *People v. Zwegardt*, 2012 COA 119, ¶ 34, 298 P.3d 1018, 1025 (“Criminal negligence requires a gross deviation from the standard of care. § 18-1-501(3). Careless driving requires that the defendant drive without due regard. A person who grossly deviates from the standard of care that a reasonable person would exercise and fails to perceive a substantial and unjustified risk that a result will occur or that a circumstance exists, has necessarily acted without due regard for safety.”).

4. + In 2019, pursuant to new legislation, the Committee added “electric scooter” to the third element, and it added the cross-reference to Instruction F:114.9 in Comment 2. *See* Ch. 271, sec. 12, § 42-4-1402(1), 2019 Colo. Sess. Laws 2557, 2561–62.

**42:16.INT**

**Careless Driving—Interrogatory (Bodily Injury)**

**If you find the defendant not guilty of careless driving, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.**

**If, however, you find the defendant guilty of careless driving, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:**

**Did the careless driving result in bodily injury?  
(Answer “Yes” or “No”)**

**The careless driving resulted in bodily injury only  
if:**



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1. the defendant's actions were the proximate cause of bodily injury to another.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

### COMMENT

1. See § 42-4-1402(2)(b), C.R.S. 2019.

2. See Instruction F:36 (defining “bodily injury”); *see, e.g.*, Instruction E:28 (special verdict form); *see also* CJI-Civ. 9:18 (2014) (defining “cause”); CJI-Civ. Ch. 9, § B (Causation) (2014) (“The [Colorado Supreme Court Committee on Civil Jury Instructions] has intentionally eliminated the use of the word ‘proximate’ when instructing the jury on causation issues because the concept of proximate cause is adequately included in the instructions in this Part B and because the word ‘proximate’ tends to be confusing to the jury.”); *People v. Stewart*, 55 P.3d 107, 116 (Colo. 2002) (discussing the significance of the different definitions of “cause” and “proximate cause” that appeared in COLJI-Crim. (1983)).

### 42:17.INT

#### Careless Driving—Interrogatory (Death)

If you find the defendant not guilty of careless driving, you should disregard this instruction and sign the verdict form to indicate your not guilty verdict.

If, however, you find the defendant guilty of careless driving, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:

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**Did the careless driving result in death? (Answer “Yes” or “No”)**

**The careless driving resulted in death only if:**

1. the defendant’s actions were the proximate cause of death to another.

**The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.**

**After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

**After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.**

### COMMENT

1. See § 42-4-1402(2)(c), C.R.S. 2019.

2. See, e.g., Instruction E:28 (special verdict form); see also CJI-Civ. 9:18 (2014) (defining “cause”); CJI-Civ. Ch. 9, § B (Causation) (2014) (“The [Colorado Supreme Court Committee on Civil Jury Instructions] has intentionally eliminated the use of the word ‘proximate’ when instructing the jury on causation issues because the concept of proximate cause is adequately included in the instructions in this Part B and because the word ‘proximate’ tends to be confusing to the jury.”); *People v. Stewart*, 55 P.3d 107, 116 (Colo. 2002) (discussing the significance of the different definitions of “cause” and “proximate cause” that appeared in COLJI-Crim. (1983)).

**42:18**

### Operation Without Insurance

**The elements of the crime of operation without insurance are:**

1. That the defendant,

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2. in the State of Colorado, at or about the date and place charged,
3. operated a [motor vehicle] [low-power scooter],
4. on a public highway of this state,
5. without a complying policy or certificate of self-insurance in full force and effect as required by law.
- [6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of operation without insurance.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of operation without insurance.

**COMMENT**

1. See § 42-4-1409(2), C.R.S. 2019.
2. See Instruction F:202 (defining “low-power scooter”); Instruction F:239 (defining “motor vehicle”).
3. See Instruction 42:05 (driving after revocation prohibited), Comment 4 (discussing the meaning of the term “operate”).

**42:19.SP**

**Operation Without Insurance—Special Instruction (Failure to Present)**

As to the charge of operation without insurance, testimony that an operator of a [motor vehicle] [low-



power scooter] failed to immediately present evidence of a complying policy or certificate of self-insurance in full force and effect as required by law, when requested to do so by a peace officer, gives rise to a permissible inference that the defendant did not have such a policy or certificate.

A permissible inference allows, but does not require, you to find a fact from proof of another fact or facts, if that conclusion is justified by the evidence as a whole. It is entirely your decision to determine what weight shall be given the evidence.

You must bear in mind that the prosecution always has the burden of proving each element of the offense beyond a reasonable doubt, and that a permissible inference does not shift that burden to the defendant.

#### COMMENT

1. See § 42-4-1409(5), C.R.S. 2019.

2. Although the statute speaks in terms of “prima facie evidence,” the concept should be explained to the jury as a permissible inference. See *People in re R.M.D.*, 829 P.2d 852 (Colo. 1992) (construing the “prima facie” proof provision of section 18-4-406 as establishing a permissible inference); see generally *Jolly v. People*, 742 P.2d 891, 897 (Colo. 1987) (unlike a mandatory presumption, the use of a permissible inference in a criminal case does not violate due process).

#### 42:20

### Eluding or Attempting to Elude a Police Officer

The elements of the crime of eluding or attempting to elude a police officer are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. operated a motor vehicle, and

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4. received from a police officer a visual or audible signal directing him [her] to bring the vehicle to a stop (such as a red light or a siren from a police officer driving a marked vehicle showing the same to be an official police, sheriff, or Colorado State Patrol car),

5. when the officer had reasonable grounds to believe that defendant had violated a state law or municipal ordinance, and

6. after receiving such signal, defendant

7. willfully,

8. increased his [her] speed or extinguished his [her] lights in an attempt to elude the police officer, or attempted in any other manner to elude the police officer, or did in fact elude the police officer.

[9. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of eluding or attempting to elude a police officer.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of eluding or attempting to elude a police officer.

**COMMENT**

1. See § 42-4-1413, C.R.S. 2019.

2. See Instruction F:195 (defining “willfully”); Instruction F:239 (defining “motor vehicle”).

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3. See Instruction 42:05 (driving after revocation prohibited), Comment 4 (discussing the meaning of the term “operate”).

4. An unnumbered comment to COLJI-Crim. 42:20 (2008) stated as follows: “The ‘probable cause’ [sic] issue in this statute is a question for the court on a motion for judgment of acquittal. It is not a jury question.” However, the Committee is now of the view that the question of whether the officer had “reasonable grounds” to make a stop is, at least in part, subject to jury determination. Therefore, the court should identify any factual questions relevant to the “reasonable grounds” inquiry and draft a special instruction advising the jury that it can find that the officer had reasonable grounds to make the stop only if it first finds that the prosecution has proven, beyond a reasonable doubt, certain threshold facts (as identified by the court).

### 42:21

#### **Failure to Fulfill Duties After Involvement in an Accident Involving Injury, Serious Bodily Injury, or Death**

**The elements of the crime of failure to fulfill duties after involvement in an accident involving injury, serious bodily injury, or death are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. drove a vehicle that was directly involved in an accident,**
- 4. resulting in injury to, serious bodily injury to, or the death of any person, and**
- 5. failed to do the following, without obstructing traffic more than was necessary: immediately stop his [her] vehicle at the scene of the accident, or as close to the accident scene as possible, and immediately return to the scene of the accident and remain at the scene of the accident until he [she] had fulfilled the legal requirements of giving notice, information, and aid.**

- [6. and that the defendant’s conduct was not**



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legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to fulfill duties after involvement in an accident involving injury, serious bodily injury, or death.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to fulfill duties after involvement in an accident involving injury, serious bodily injury, or death.

### COMMENT

1. See § 42-4-1601(1), C.R.S. 2019.
2. See Instruction F:182 (defining “injury”); Instruction F:332 (defining “serious bodily injury”); Instruction F:386 (defining “vehicle”).
3. See *People v. Manzo*, 144 P.3d 551, 559 (Colo. 2006) (“Leaving the Scene of an Accident with Serious Injury [in violation of section 42-4-1601] is a strict liability offense because the plain language of the statute does not require or imply a culpable mental state.”); Instruction G1:02 (strict liability crimes).

### 42:22.SP

#### **Failure to Fulfill Duties After Involvement in an Accident Involving Injury, Serious Bodily Injury, or Death—Special Instruction (Legal Requirements of Giving Notice, Information, and Aid)**

The driver of any vehicle involved in an accident resulting in injury to, serious bodily injury to, or death of any person or damage to any vehicle which was driven or attended by any person shall give the driver’s name, the driver’s address, and the registration number of the vehicle he [she] was driving and shall upon request exhibit his [her] driver’s license to

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the person struck or the driver or occupant of or person attending any vehicle collided with and where practical shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if the carrying is requested by the injured person.

A driver does not commit the crime of failure to fulfill duties after involvement in an accident involving injury or death if, after fulfilling the requirements set forth above, he [she] leaves the scene of the accident for the purpose of reporting the accident to a duly authorized police authority.

In the event that none of the persons specified above are in condition to receive the information to which they otherwise would be entitled and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements, insofar as possible on the driver's part to be performed, shall immediately report the accident to the nearest office of a duly authorized police authority and give that authority notice of the location of the accident, as well as all information specified above.

### COMMENT

1. See § 42-4-1601(1.5), C.R.S. 2019; § 42-4-1603(1), (2), C.R.S. 2019 (incorporating section 42-4-1606(1), C.R.S. 2019).

2. See *People v. Hernandez*, 250 P.3d 568, 575 (Colo. 2011) ("We hold that sections 42-4-1601(1) and -1603(1) require a driver of a vehicle involved in an accident to affirmatively identify himself as the driver before leaving the scene of the accident if that fact is not otherwise reasonably apparent from the circumstances.").



**42:23.INT**

**Failure to Fulfill Duties After Involvement in an Accident  
Involving Injury, Serious Bodily Injury, or  
Death—Interrogatory**

If you find the defendant not guilty of failure to fulfill duties after involvement in an accident involving injury, serious bodily injury, or death, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict.

If, however, you find the defendant guilty of failure to fulfill duties after involvement in an accident involving injury, serious bodily injury, or death, you should sign the verdict form to indicate your finding of guilt, and answer the following verdict question:

Did the accident result in [injury] [serious bodily injury] [death]? (Answer “Yes” or “No”)

The accident resulted in [injury] [serious bodily injury] [death] only if:

1. The accident resulted in [[injury] [serious bodily injury] to] [the death of] any person.

The prosecution has the burden to prove the numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden, you should mark “Yes” in the appropriate place, and have the foreperson sign the designated line of the verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden, you should mark “No” in the appropriate place, and have the foreperson sign the designated line of the verdict form.



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### COMMENT

1. See § 42-4-1601(2)(a) to (c), C.R.S. 2019.

2. See Instruction F:36 (defining “bodily injury”); Instruction F:332 (defining “serious bodily injury”); *see, e.g.*, Instruction E:28 (special verdict form).

3. Use a separate copy of this interrogatory for each bracketed sentence enhancement factor that is at issue.

### 42:24

#### **Failure to Fulfill Duties After Involvement in an Accident Resulting in Damage to a Driven or Attended Vehicle**

**The elements of the crime of failure to fulfill duties after involvement in an accident resulting in damage to a driven or attended vehicle are:**

- 1. That the defendant,**
- 2. in the State of Colorado, at or about the date and place charged,**
- 3. drove a vehicle, and**
- 4. was directly involved in an accident resulting only in damage to a vehicle which was driven or attended by any person, and**
- 5. failed to do the following, without obstructing traffic more than was necessary: immediately stop his [her] vehicle at the scene of the accident, or as close to the accident scene as possible, and immediately return to the scene of the accident and remain at the scene of the accident until he [she] had fulfilled the legal requirements of giving notice, information, and aid.**
- [6. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide**

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the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to fulfill duties after involvement in an accident resulting in damage to a driven or attended vehicle.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to fulfill duties after involvement in an accident resulting in damage to a driven or attended vehicle.

### COMMENT

1. See § 42-4-1602(1), C.R.S. 2019.
2. See Instruction F:386 (defining “vehicle”).

### 42:25.SP

#### **Failure to Fulfill Duties After Involvement in an Accident Resulting in Damage to a Driven or Attended Vehicle— Special Instruction (Legal Requirements of Giving Notice, Information, and Aid)**

When an accident occurs on the traveled portion, median, or ramp of a divided highway and each vehicle involved can be safely driven, each driver shall move such driver’s vehicle as soon as practicable off the traveled portion, median, or ramp to a frontage road, the nearest suitable cross street, or other suitable location to fulfill the following requirements.

The driver of any vehicle involved in an accident resulting in damage to any vehicle which was driven or attended by any person shall give the driver’s name, the driver’s address, and the registration number of the vehicle he [she] was driving and shall upon request exhibit his [her] driver’s license to the person struck or the driver or occupant of or person attending any vehicle collided with and where practical shall render to any person injured in such ac-



cident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if the carrying is requested by the injured person.

A driver does not commit the crime of failure to fulfill duties after involvement in an accident resulting in damage to any vehicle which was driven or attended by any person if, after fulfilling the requirements set forth above, he [she] leaves the scene of the accident for the purpose of reporting the accident to a duly authorized police authority.

In the event that none of the persons specified above are in condition to receive the information to which they otherwise would be entitled and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements, insofar as possible on the driver's part to be performed, shall immediately report the accident to the nearest office of a duly authorized police authority and give that authority notice of the location of the accident, as well as all information specified above.

#### COMMENT

1. See § 42-4-1602, C.R.S. 2019 (referencing section 42-4-1603, which incorporates section 42-4-1606(1)).

#### 42:26

#### **Failure to Fulfill Duties After Striking an Unattended Vehicle or Other Property**

The elements of the crime of failure to fulfill duties after striking an unattended vehicle or other property are:

1. That the defendant,



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**2. in the State of Colorado, at or about the date and place charged,**

**3. drove a vehicle, and**

**4. collided with or was involved in an accident with any vehicle or other property which was unattended (other than a highway fixture or a traffic control device),**

**5. resulting in any damage to such vehicle or other property, and**

**6. [failed to do the following, without obstructing traffic more than was necessary: immediately stop, and immediately either locate and notify the operator or owner of such vehicle or other property of the accident or collision, the defendant's name and address, and the registration number of the vehicle he [she] was driving, or attach securely in a conspicuous place in or on such vehicle or other property a written notice giving the driver's name and address and the registration number of the vehicle he [she] was driving]**

**[; or] [failed [also] to give immediate notice of the location of such accident to the nearest office of the duly authorized police authority, and provide such police authority with his [her] name, address, and the registration number of the vehicle he [she] was driving].**

**[7. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to fulfill duties after striking an unattended vehicle or other property.**

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After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to fulfill duties after striking an unattended vehicle or other property.

### COMMENT

1. See § 42-4-1604, C.R.S. 2019 (incorporating section 42-4-1606, which references the informational requirements of section 42-4-1603(2), which, in turn, references the informational requirements of section 42-4-1603(1)).

2. See Instruction F:386 (defining “vehicle”).

**42:27**

### **Failure to Fulfill Duties After Striking a Highway Fixture or Traffic Control Device**

The elements of the crime of failure to fulfill duties after striking a highway fixture or traffic control device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. drove a vehicle, and
4. was involved in an accident resulting only in damage to fixtures or traffic control devices upon or adjacent to a highway, and
5. failed to notify the road authority in charge of such property of the accident, and of his [her] name and address and of the registration number of the vehicle he [she] was driving; or failed to give immediate notice of the location of such accident to the nearest office of the duly authorized police authority, and provide such police authority with his [her] name, address, and the registration number of the vehicle he [she] was driving.

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**[6. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.]**

**After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of failure to fulfill duties after striking a highway fixture or traffic control device.**

**After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of failure to fulfill duties after striking a highway fixture or traffic control device.**

### COMMENT

1. See § 42-4-1605, C.R.S. 2019 (incorporating section 42-4-1606, which references the informational requirements of section 42-4-1603(2), which, in turn, references the informational requirements of section 42-4-1603(1)).

2. See Instruction F:386 (defining “vehicle”).

3. The terms “fixture” and “traffic control device” are not defined in section 42-1-102, C.R.S. 2019.



## UNITED STATES CODE ANNOTATED

# CODE OF FEDERAL REGULATIONS

# COLORADO CONSTITUTION

Tbl of L&R-1

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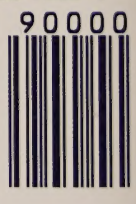
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